Official Gazette

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TABLE OF CONTENTS

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 29

DIRECTING THAT NO OFFICER OR EMPLOYEE OF GOVERNMENT CORPORATIONS BE ALLOWED PER DIEMS OF MORE THAN ₱50 WHEN TRAVELING ABROAD

WHEREAS, it has been brought to my attention that some officers of government corporations under the past administration were given per diems of more than ₱50 when traveling abroad; and

WHEREAS, section 19 of Republic Act No. 906, (General Appropriation Act for the fiscal year 1954) provides that no per diems in excess of ₱50 shall be paid to any official or employee traveling outside of the Philippines;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by law, do hereby order that no officer or employee of corporations owned or controlled by the Government shall be allowed per diems in excess of ₱50 when traveling abroad.

Done in the City of Manila, this 3rd day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 30

DESIGNATING THE DISTRICT HEALTH OFFICERS, CITY HEALTH OFFICERS AND SANITARY ENGINEERS OF THE DEPARTMENT OF HEALTH

TO REGULATE THE PLANNING AND CONSTRUCTION OF WATER SUPPLIES

WHEREAS, it is necessary and advisable to regulate the planning, installation and/or construction of water supplies both for public and private consumption; and

WHEREAS, water supplies, if improperly located and installed and/or constructed, become possible vehicles of waterborne disease transmission;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by law and in the interest of public health, do hereby designate and authorize the District Health Officers, City Health Officers and Sanitary Engineers of the Department of Health to regulate the installation and/or construction of works pertaining to water supplies.

Well sites as well as plans for construction of other community water supplies shall bear the approval of the District Health Officer or City Health Officer and the Sanitary Engineer of the Department of Health except in the case of waterworks which require the approval of the Director of Health.

The District Health Officers, City Health Officers and Sanitary Engineers of the Department of Health shall within their respective areas, have the authority to inspect, supervise and stop if necessary, the construction of water supplies or part thereof found not in conformity with the approved plans or not in accordance with accepted public health practice.

Done in the City of Manila, this 3rd day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
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MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 31

REGULATIONS GOVERNING THE USE OF MOTOR VEHICLES OR OTHER MEANS OF TRANSPORTATION FOR OFFICIAL PURPOSES

By virtue of the powers vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby promulgate the following rules and regulations to govern the use of motor vehicles or other means of transportation by officials and employees of the Government, effective May 1, 1954:

1. Provincial boards and city boards or councils may authorize, subject to the approval of the Department Secretaries concerned, those officials whose duties make it necessary or advisable for them to use special means of transportation for the purpose of supervision, inspection, or investigation, to utilize their privately-owned motor vehicles for official purposes and to receive reimbursement for the same at the rate of ₱0.20 for each kilometer of travel in the case of automobiles and ₱0.15 for each kilometer of travel in the case of jeeps, on official business: *Provided*, That the maximum allowances to be paid during any month shall not exceed those given in the following schedules:

(A) For provinces and cities having 350 or more of designated first and second class roads connected with the provincial capital or city—

1. Provincial Governors, City Mayors and District and City Engineers	₱240.00
2. Provincial Treasurers	200.00
3. Provincial Auditors, Division Superintendents of Schools, District Health Officers, and other officials	160.00

(B) For provinces and cities having 200 kilometers or more of designated first and second class roads connected with the provincial capital or city but less than 350 kilometers—

1. Provincial Governors, City Mayors and District and City Engineers	₱210.00
2. Provincial Treasurers	180.00
3. Provincial Auditors, Division Superintendents of Schools, District Health Officers, and other officials	140.00

(C) For provinces and cities having 150 kilometers or more of designated first and second class roads connected with the provincial capital or city but less than 200 kilometers—

1. Provincial Governors, City Mayors and District and City Engineers	₱180.00
2. Provincial Treasurers	160.00
3. Provincial Auditors, Division Superintendents of Schools, District Health Officers, and other officials	120.00

(D) For provinces and cities having 75 kilometers or more of designated first and second class roads connected with the provincial capital or city but less than 150 kilometers—

1. Provincial Governors, City Mayors and District and City Engineers	₱150.00

2. Provincial Treasurers	140.00
3. Provincial Auditors, Division Superintendents of Schools, District Health Officers, and other officials	100.00

(E) For provinces and cities having less than 75 kilometers of designated first and second class roads connected with the provincial capital or city—

1. Provincial Governors, City Mayors and District and City Engineers	₱120.00
2. Provincial Treasurers	100.00
3. Provincial Auditors, Division Superintendents of Schools, District Health Officers, and other officials	80.00

As above used, the terms provincial treasurers, provincial auditors, division superintendents of schools, and district health officers shall be construed to embrace the officials of a chartered city corresponding to these positions.

For the purpose of determining the amount of transportation allowances of the officials of a particular province or city, the District or City Engineer thereof, as the case may be, shall certify the number of kilometers of designated first and second class roads connected with the provincial capital or city, before an allowance for a privately-owned motor vehicle (automobile or jeep) is granted.

The above rates of maximum transportation allowances shall also apply to government-owned automobiles and jeeps exclusively assigned to an official.

2. Employees of the National Government and of provincial and city governments who perform field duties may be given monthly allowances for providing other private means of transportation for official purposes when properly authorized, with the approval of the Department Secretary concerned, as follows:

(*a*) For motorcycles, ₱0.08 per kilometer, or a maximum of ₱40 per month.

(*b*) For horses, ₱0.10 per kilometer, or a maximum of ₱20 per month.

(*c*) For bicycles, ₱0.02 per kilometer, or a maximum of ₱10 per month.

3. All motor vehicles owned by a province or chartered city for common use shall be kept in a central garage to be operated by the District or City Engineer who shall rent such vehicle to officials making designated trips for official purposes in the order in which applications are received and after taking into consideration the relative urgency of the proposed trip.

Motor vehicles purchased from the road and bridge fund or streets and bridges fund for the official use of the District or City Engineer and his assistants and those purchased from other provincial or city funds exclusively assigned for the use of one office shall not be operated for common use, unless the official concerned for whom the use of the motor vehicle has been exclusively reserved will allow the renting of the same to others on official business at the rate of ₱0.20 per kilometer of travel in the case of automobiles and ₱0.15 per kilometer of travel in the case of jeeps. The rent so paid shall be refunded to the transportation expenses of the office concerned.

4. In view of the nature of their duties and responsibilities and their official and social standing in their communities, the chiefs of offices—provincial governors, provincial treasurers, provincial auditors, division superintendents of schools, district health officers, district engineers, and others of equal rank shall be entitled to government transportation from residence to office and vice-versa and in connection with civic and semi-official activities beneficial to the public interest, such as the conduct of drives for voluntary contributions for charitable purposes, attendance at public functions, and others of similar nature.

5. All orders, rules and regulations which are inconsistent herewith are hereby revoked.

Done in the City of Manila, this 3rd day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
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MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 32

FURTHER AMENDING EXECUTIVE ORDER NO. 651 DATED DECEMBER 15, 1953, CREATING THE ROXAS MEMORIAL COMMISSION

By virtue of the powers vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby further amend Executive Order No. 651 dated December 15, 1953, as amended by Executive Order No. 28 dated April 23, 1954, by providing that the Roxas Memorial Commission therein created shall have two representatives of the United Disabled Veterans Association of the Philippines as additional members.

Done in the City of Manila, this 20th day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

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BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 33

REVISING FURTHER EXECUTIVE ORDER NO. 72, DATED DECEMBER 3, 1936, ESTABLISHING A CLASSIFICATION OF PORTS

The Port of Calbayog, Calbayog City, is hereby declared in the classification of National Ports open to coastwise trade.

Executive Order No. 72, dated December 3, 1936, as amended by Executive Orders Nos. 195, 254, and 289, dated March 13, 1939, February 20, 1940, and July 8, 1940, respectively, is further amended accordingly.

Done in the City of Manila, this 20th day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

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EXECUTIVE ORDER NO. 36

CREATING A SPECIAL COMMITTEE TO ADMINISTER THE RURAL RECONSTRUCTION PROJECT AT SAN LUIS, PAMPANGA

To facilitate the reconstruction and development of the municipality of San Luis, Pampanga, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by law, do hereby create a special committee, to be known as the President's San Luis Project Committee, to administer the rural reconstruction of project of the government in said municipality. The Committee shall be composed of the following:

Mr. Conrado Benitez	Chairman
Mr. Ricardo Labez	Executive Director
Col. Nicanor Jimenez	Liaison member and adviser on psychological warfare
Mr. Carlos Mañacop	Member
Mrs. Hilaria Uy	Member

The Committee is authorized to call upon any department, bureau, office, agency or instrumentality of the Government, or upon any officer or employee thereof, for such assistance and information as it may require in the performance of its work, and, for the purpose of securing such information, it shall have access to, and the right to examine any books, documents, papers, or records thereof.

The Committee shall submit monthly reports on the progress of the project to the President of the Philippines.

Done in the City of Manila, this 22nd day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

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MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 37

AMENDING EXECUTIVE ORDER NO. 500, DATED MAY 2, 1952, RELATIVE TO THE TRANSFER OF UNSERVICEABLE GOVERNMENT PROPERTY TO THE NATIONAL SHIPYARDS AND STEEL CORPORATION

By virtue of the powers vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby order:

1. All unserviceable property of the Government, its branches, agencies and instrumentalities, which is beyond economical repair and no longer needed, from which scrap iron, steel, brass, copper, lead and other metals may be derived, shall be transferred, in accordance with section 641 of the Revised Administrative Code, without cost to the National Shipyards and Steel Corporation.

2. All accountable officers shall from time to time report to the National Shipyards and Steel Corporation, through the director or chief of the bureau or office concerned and the Auditor General or his duly authorized representative, the existence of unserviceable property mentioned in the preceding paragraph hereof. Upon being advised of such report, the Department Head concerned shall authorize the National Shipyards and Steel Corporation to take the necessary steps towards the possession and control of said property.

3. In the case of unserviceable property, as defined in paragraph 1 hereof, which was originally acquired from the defunct Surplus Property Commission pursuant to Republic Act No. 33 and Executive Order No. 27, dated November 18, 1946, as amended, the report of the accountable officers shall be coursed, through the director or chief of the bureau or office concerned, to the Board of Liquidators for disposal in accordance herewith. Should the Board of Liquidators find that the property, or any part or parts thereof, is beyond economical repair, the Board shall authorize the National Shipyards and Steel Corporation to take the necessary steps towards the possession and control of said property, or any part or parts thereof, and, upon presentation of proper invoices and or receipts of delivery of said property to the National Shipyards and Steel Corporation, release the surrendering office or agency from its accountability therefor. But should the Board of Liquidators find that the property, or any part or parts thereof, is not beyond economical repair, it may sell or otherwise dispose of such property, or any part or parts thereof, in accordance with existing law and regulations.

4. The transfer to the National Shipyards and Steel Corporation of unserviceable property as above defined, acquired under Military Assistance Agreements between the Philippines and the United States, shall be subject to the existing arrangements and procedures mutually agreed upon between the two Governments.

5. Executive Order No. 500, dated May 2, 1952, and all other executive orders, rules and regulations which are in conflict herewith are hereby amended accordingly.

Done in the City of Manila, this 22nd day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

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EXECUTIVE ORDER NO. 38

MERGING THE MUNICIPAL DISTRICT OF LUMBIA IN THE PROVINCE OF MISAMIS ORIENTAL WITH THE MUNICIPALITY OF OPOL, SAME PROVINCE, AND THE CITY OF CAGAYAN DE ORO

Pursuant to the provisions of section sixty-eight of the Revised Administrative Code and section two of Republic Act Numbered Five hundred and twenty-one, otherwise known as the Charter of the City of Cagayan de Oro, that part of the territory of the municipal district of Lumbia in the Province of Misamis Oriental lying west of the Iponan River is hereby merged with the municipality of Opol, same province, and the other part east of the said river is hereby merged with the City of Cagayan de Oro.

This Order shall take effect immediately.

Done in the City of Manila, this twenty-sixth day of May, in the year of Our Lord, nineteen hundred and fifty-four and of the Independence of the Philippines, the eighth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
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MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 18

AMENDING PROCLAMATION NO. 298 DATED DECEMBER 13, 1951, BY SUBJECTING THE DISPOSITION OF THE LAND RESERVED THEREUNDER TO THE PROVISIONS OF REPUBLIC ACT NO. 477

By virtue of the powers vested in me by law, and upon the recommendation of the Secretary of Agriculture and Natural Resources, I, Ramon Magsaysay, President of the Philippines, do hereby amend Proclamation No. 298 dated December 13, 1951, in the sense that the land of the public domain reserved thereunder shall be subject to disposition under the provisions of section 3 of Republic Act No. 477.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 3rd day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

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MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 19

REVOKING PROCLAMATION NO. 541, SERIES OF 1940, AND DECLARING THE PARCEL OR PARCELS OF LAND EMBRACED THEREIN SITUATED IN THE MUNICIPALITY OF GINGOOG, PROVINCE OF MISAMIS ORIENTAL, ISLAND OF MINDANAO, OPEN TO DISPOSITION UNDER THE PROVISIONS OF THE PUBLIC LAND ACT

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the authority vested in me by law, I hereby revoke Proclamation No. 541, series of 1940, and declare the parcel or parcels of land embraced therein situated in the municipality of Gingoog, Province of Misamis Oriental, Island of Mindanao, open to disposition under the provisions of the Public Land Act.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 3rd day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

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PROCLAMATION No. 20

RESERVING FOR RECREATION CENTER PURPOSES A CERTAIN PARCEL OF THE PUBLIC DOMAIN KNOWN AS "TIMES BEACH" SITUATED AT CABACAN–PUNTA DUMALAG, CITY OF DAVAO

Upon the recommendation of the Secretary of Agriculture and Natural Resources, and pursuant to the provisions of section 83 of Commonwealth Act No. 141, as amended, I hereby withdraw from sale or settlement and reserve for recreation center purposes under the administration of the City of Davao, subject to private rights, if any there be, a certain parcel of the public domain known as "Times Beach" situated at Cabacan–Punta Dumalag, City of Davao, and more particularly described in the Bureau of Lands Plan Mr–1050, to wit:

Mr–1050 (*Municipal Reservation*—TIMES BEACH RECREATION CENTER)

A parcel of land (as shown on plan Mr–1050), situated in the City of Davao. Bounded on the NE., by Public land; on the SE., by Davao Gulf; on the SW., by Public land; and on the NW., by lots Nos. 361, 378 and 379, Davao cadastre and road to national highway. Beginning at a point marked 1 on plan, being identical to B.L.L.M.

No. 22, Davao cadastre 102, thence N. 72° 00′ E., 449.74 meters to point 2; thence N. 73° 06′ E., 85.16 meters to point 3; thence N. 74° 22′ E., 457.71 meters to point 4; thence N. 81° 06′ E., 856.22 meters to point 5; thence S. 67° 39′ E., 99.36 meters to point 6; thence S. 76° 55′ W., 1,832 meters to point 7; thence N. 13° 45′ W., 96.50 meters to the point of beginning; containing an area of 242,948 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: points 2 and 3, by Pls. Cyl. concrete monuments; and the rest, by B.P.W.–D.C.S.M. concrete monuments; bearings true; declination 2° 00′ E.; date of survey, September 8–9, 1953 and that of the approval, December 10, 1953.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 3rd day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

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PROCLAMATION No. 21

REVOKING PROCLAMATION NO. 41, SERIES OF 1923, AND DECLARING OPEN TO DISPOSITION UNDER THE PROVISIONS OF THE PUBLIC LAND ACT THE PARCELS OF LAND COVERED THEREBY SITUATED IN THE BARRIO OF MIDSAYAP, MUNICIPAL DISTRICT OF DULAUAN, PROVINCE OF COTABATO, ISLAND OF MINDANAO

Pursuant to the provisions of section 88 of Commonwealth Act No. 141, as amended, I, Ramon Magsaysay, President of the Philippines, do hereby revoke Proclamation No. 41, series of 1923, and declare the parcels of land covered thereby situated in the barrio of Midsayap, municipal district of Dulauan, Province of Cotabato, Island of Mindanao, open to disposition under the provisions of said Act.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 9th day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
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MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 22

REVOKING PROCLAMATION NO. 7, SERIES OF 1920, AND DECLARING THE PARCEL OR PARCELS OF LAND EMBRACED THEREIN SITUATED IN THE MUNICIPALITY OF TAGO, PROVINCE OF SURIGAO, ISLAND OF MINDANAO, OPEN TO DISPOSITION UNDER THE PROVISIONS OF THE PUBLIC LAND ACT

Upon the recommendation of the Secretary of Agriculture and Natural Resources, and pursuant to the provisions of sections 83 and 88 of Commonwealth Act No. 141, as amended, I hereby revoke Proclamation No. 7, series of 1920, and declare the parcel or parcels of land embraced therein situated in the municipality of of Tago, Province of Surigao, Island of Mindanao, open to disposition under the provisions of said Act.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 9th day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
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BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 23

RESERVING FOR MUNICIPAL PLAZA AND MARKET SITE PURPOSES CERTAIN PARCELS OF THE PUBLIC DOMAIN SITUATED IN THE MUNICIPALITY OF STA. CRUZ, PROVINCE OF ZAMBALES, ISLAND OF LUZON

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 83 of Commonwealth Act No. 141, as amended, I hereby withdraw from sale or settlement and reserve for municipal plaza and market site purposes, under the administration of the municipality of Sta. Cruz, subject to private rights, if any there be, certain parcels of the public domain situated in the municipality of Sta. Cruz, Province of Zambales, Island of Luzon, and more particularly described in the Bureau of Lands plan Mr–1006, to wit:

Lot No. 1 Mr–1006 (Municipal Plaza)

A parcel of land (lot No. 1 as shown on plan Mr–1006, G.L.R.O. Record No. ————), situated in the poblacion, municipality of Sta. Cruz, Province of Zambales. Bounded on the N., by lot 1–B–2 of plan II–2139 (no plan); on the NE., by lots 1–A, 1–B–1–B and 1–B–2 of plan II–2139 (no plan); on the E., by provincial road; on the SE., by Lipay River; on the SW., by public land (Seashore); and on the NW., by property of Leocadio Merto. Beginning at a point marked 1 on plan, being S. 65° 33′ W., 168.81 meters from B.L.L.M. 2, municipality of Sta. Cruz, Zambales, thence N. 70° 16′ E., 94.82 meters to point 2; thence N. 79° 16′ E., 7.17 meters to point 3; thence S. 31° 52′ E., 49.69 meters to point 4; thence S. 31° 52′ E., 40.89 meters to point 5; thence S. 38° 41′ E., 25.22 meters to point 6; thence S. 38° 41′ E., 30.93 meters to point 7; thence S. 37° 07′ E., 28.93 meters to point 8; thence S. 58° 30′ E., 72.15 meters to point 9; thence S. 88° 45′ E., 65.62 meters to point 10; thence N. 19° 50′ E., 18.16 meters to point 11; thence S. 5° 30′ E., 65.29 meters to point 12; thence S. 71° 08′ W., 88.61 meters to point 13; thence N. 50° 19′ W., 178.21 meters to point 14; thence N. 45° 55′ W., 160.01 meters to the point of beginning; containing an area of 25,155 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: points 1, 2 and 12, by Bureau of Lands cylindrical concrete monuments; point 3, by an intersection; points 13 and 14, by stakes; and the rest, by old corners; bearings true; declination 0° 35′ E.; date of survey, May 21, 1948 and that of the approval, February 22, 1952.

Lot No. 2 Mr–1006 (Market Site)

A parcel of land (lot No. 2 as shown on the plan Mr–1006, G.L.R.O. Record No. ————), situated in the poblacion, munic-

ipality of Sta. Cruz, Province of Zambales. Bounded on the N., by properties of the municipal government of Sta. Cruz (old market site) and Feliciano Alonzo, barrio road and property of Exequiel Maniego; on the E., by creek; on the SE. and SW., by Lipay River; and on the W., by provincial road and property of the municipal government of Sta. Cruz (old market site). Beginning at a point marked 1 on plan, being S. 18° 44′ E., 314.65 meters from B.L.L.M. 1, municipality of Sta. Cruz, Zambales, thence N. 3° 23′ E., 53.47 meters to point 2; thence S. 78° 41′ E., 35.08 meters to point 3; thence N. 11° 48′ W., 43.94 meters to point 4; thence N. 76° 39′ E., 20.27 meters to point 5; thence N. 75° 05′ E., 10.03 meters to point 6; thence N. 78° 43′ E., 30.58 meters to point 7; thence S. 19° 26′ E., 72.97 meters to point 8; thence S. 62° 39′ W., 96.36 meters to point 9; thence N. 68° 49′ W., 28.58 meters to the point of beginning; containing an area of 7,705 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: points 1, 5, 6, and 7, by the Bureau of Lands cylindrical concrete monuments; points 8 and 9, by stakes; and the rest, by old corners; bearings true; declination 0° 35′ E.; date of survey, May 21, 1948 and that of the approval, February 22, 1952.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 9th day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary
MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 24

DECLARING THE PERIOD FROM JUNE 1, 1954, TO MAY 31, 1955, AS THRIFT YEAR

WHEREAS, the effective prosecution of the nation's investment program demands that the savings of the people be utilized in the financing of productive enterprises and activities that will accelerate our economic and industrial development; and

WHEREAS, in the light of the foregoing imperative, it is desirable that the attention of the people be drawn to the

necessity of practising thrift to the highest degree as a matter of patriotic duty;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare the period from June 1, 1954, to May 31, 1955, as Thrift Year, during which a thrift campaign will be undertaken under the sponsorship of the Bankers Association of the Philippines. I call upon all banks and financial institutions operating in this country, and upon all industrialists, businessmen, farmers and the people as a whole to lend their cooperation and assistance in making this campaign successful.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 9th day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

[SEAL] RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 25

REVOKING PROCLAMATION NO. 265, SERIES OF 1929, AND RESERVING THE LAND EMBRACED THEREIN SITUATED IN THE CITY OF DAVAO FOR PARK AND PLAYGROUND PURPOSES

Pursuant to the provisions of section 88 of Commonwealth Act No. 141, as amended, I hereby revoke Proclamation No. 265, series of 1929, and reserve the parcel or parcels of land embraced therein, situated in the City of Davao, for park and playground purposes under the administration of said city.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 10th day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 26

DESIGNATING THE PERIOD FROM JUNE 1 TO JULY 15, 1954, FOR THE SIXTH ANNUAL FUND CAMPAIGN OF THE COMMUNITY CHEST OF GREATER MANILA

To enable the Community Chest of Greater Manila to carry out its work of benevolence and community welfare services, through the agencies affiliated with it, I, Ramon Magsaysay, President of the Philippines, do hereby designate the period from June 1 to July 15, 1954, for its Sixth Annual Fund Campaign.

I call upon all residents, firms, and organizations in Manila and its suburbs to support this campaign and to give generously to the Community Chest of Greater Manila, which unites many campaigns in one yearly appeal.

I authorize all government officials and employees, including school authorities and teachers, to accept, for the Community Chest of Greater Manila, fund-raising responsibilities and to give it active support and leadership in their communities.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 11th day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 27

DESIGNATING THE PERIOD FROM JULY 1 TO AUGUST 14, 1954, AS THE PERIOD FOR THE NATIONAL FUND CAMPAIGN OF THE BOY SCOUTS OF THE PHILIPPINES IN PLACES OUTSIDE OF GREATER MANILA

WHEREAS, the Boy Scouts of the Philippines, a public corporation created under Commonwealth Act No. 111 for the purpose of promoting the character development and citizenship training of the youth of the land, has more than amply demonstrated that it merits the continued moral encouragement and material support of our people and that there is a great need for this organization to make the Scouting Program available to the thousands of boys all over the Philippines;

WHEREAS, said organization is in need of funds to carry on its operation effectively, to intensify its nation-wide training and recruiting program so that the great number of boys of Scout age seeking admission into the organization may be enrolled, to plan and promote other programs of activity for the greater benefit of its members, and to meet its obligations as a member of the Boy Scouts International Bureau; and

WHEREAS, the annual campaign, aside from offering us an opportunity to give tangible expression of our appreciation for the good work being done by the Boy Scouts of the Philippines, also affords a means by which we can meet a civic obligation by helping this organization train and mould every boy in the land to be a patriotic, God-fearing, upright, clean and responsible citizen;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, do hereby designate and set aside the period from July 1 to August 14, 1954, for the Boy Scouts of the Philippines to conduct its 1954 Fund Campaign in the provinces and territories outside of Greater Manila and raise funds for the attainment of its avowed aims and purposes. I call upon all government officials and employees and all citizens and residents of the Philippines outside of Greater Manila to assist in this campaign and to give it their entire support so that the Boy Scouts of the Philippines may be assured of funds that will enable it to carry on its work and administer its program to as many of our boys of Scout age as possible. I also authorize all national authorities and teachers to accept, for the Boy Scouts of the Philippines,

fund-raising responsibilities and urge them to give active support and leadership in their respective communities.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 12th day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 28

RESERVING FOR POST-OFFICE AND RADIO STATION PURPOSES CERTAIN PARCELS OF THE PUBLIC DOMAIN SITUATED IN THE MUNICIPALITY OF SAN JOSE, PROVINCE OF OCCIDENTAL MINDORO, ISLAND OF MINDORO

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 76 of Commonwealth Act No. 141, as amended, I hereby withdraw from sale or settlement and reserve for post-office and radio station purposes, under the administration of the Director of Telecommunications, subject to private rights, if any there be, the following parcels of the public domain situated in the municipality of San Jose, Province of Occidental Mindoro, Island of Mindoro, to wit:

Lot 2553 (Swo-31900) San Jose Townsite Ts-99
(Republic of the Philippines—Bureau of Telecommunications

A parcel of land (lot No. 2553 of San Jose Townsite), situated in the Poblacion, municipality of San Jose, Province of Mindoro Occidental. Bounded on the NE., by lot No. 2552, San Jose Townsite; on the SE., by lot 2550, San Jose Townsite; on the SW., by National road; and on the NW., by lot No. 2554, San Jose Townsite. Beginning at a point marked 1 on plan, being S. 42° 47′ W., 454.50 meters from B.L.L.M. 66, San Jose Townsite Ts-99, thence S. 10° 08′ E., 19.86 meters to point 2; thence S. 79° 59′ W., 33.66 meters to point 3; thence N. 17° 41′ W., 6.98 meters to point 4; thence N. 18° 50′ W., 13.32 meters to point 5; thence N.

80° 10′ E., 36.60 meters to the point of beginning; containing an area of 705 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground by old corners; bearings true; declination 1° 02′ E.; date prepared, October 1, 1952.

Lot 2554 (Swo-31900) San Jose Townsite Ts-99
(Republic of the Philippines—Bureau of Telecommunications

A parcel of land (lot No. 2554 of San Jose Townsite), situated in the poblacion, municipality of San Jose, Province of Mindoro Occidental. Bounded on the NE., by lot 2555, San Jose Townsite; on the SE., by lot 2553, San Jose Townsite; on the SW., by National road; and on the NW., by road. Beginning at a point marked 1 on plan, being S. 24° 47′ W., 454.50 meters from B.L.L.M. 66, San Jose Townsite Ts-99, thence S. 80° 10′ W., 36.60 meters to point 2; thence N. 20° 24′ W., 7.20 meters to point 3; thence N. 19° 39′ W., 13.62 meters to point 4; thence N. 80° 32′ E., 40.05 meters to point 5; thence S. 10° 34′ E., 20.24 meters to the point of beginning; containing an area of 781 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground by old corners; bearings true; declination 1° 02′ E., date prepared, October 1, 1952.

IN WITMESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 20th day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 29

DECLARING THE PERIOD FROM JUNE 1 TO 7, 1954, AS NATIONAL MUSIC WEEK

WHEREAS, music is a common cultural heritage that must be upheld and developed in order to assure our nation that fullness of life which is the goal of all civilized peoples;

WHEREAS, in order to place the blessings of music within the reach of the humblest man in the barrio, we must

systematically develop the inherent musical gift of our people; and

WHEREAS, the attainment of this objective can be accelerated by making our people more music-conscious;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare the period from June 1 to 7, 1954, as National Music Week, and designate the Department of Education to take charge of, and coordinate, all activities in commemoration of said Week.

I call upon all citizens and residents of the Philippines, of watever race, nationality or creed, to observe this Week, and I enjoin all governors, city mayors and officers and employees of the national and local governments to extend their assistance and cooperation in the celebration so that it will be a complete success.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 22nd day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES

MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 30

RESERVING FOR SCHOOL SITE PURPOSES A CERTAIN PROPERTY OF THE PRIVATE DOMAIN OF THE GOVERNMENT SITUATED IN THE MUNICIPALITY OF NAUJAN, PROVINCE OF MINDORO ORIENTAL, ISLAND OF MINDORO

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 64(*e*) of the Revised Administrative Code, I hereby withdraw from sale or settlement and reserve for school site purposes, under the administration of the Director of Public Schools, subject to private rights, if

any there be, a certain property of the private domain of the Government situated in the Municipality of Naujan, Province of Mindoro Oriental, Island of Mindoro, and more particularly described as follows:

Lot 3278, Naujan Cadastre 200

A parcel of land (lot 3278 of the cadastral survey of Naujan, G.L.R.O. Cadastral Record No. ———) together with the improvements existing thereon situated in the barrio of San Jose, municipality of Naujan, Province of Oriental Mindoro. Bounded on the NE., by Pinag-salubungan River; on the SE., by lot 3270 of Naujan Cadastre; on the SW., by lot 3271 of Naujan Cadastre and Pinag-salubungan River; and on the NW., by Pinag-salubungan River. Beginning at a point marked 1 on plan, being N. 23° 11′ W., 623.36 meters from B.L.L.M. 66, Naujan Cadastre No. 200; thence N. 59° 23′ W., 68.50 meters to point 2; thence N. 4° 12′ W., 49.07 meters to point 3; thence N. 50° 17′ W., 130.32 meters to point 4; thence N. 56° 37′ W., 95.10 meters to point 5; thence N. 52° 34′ W., 175.97 meters to point 6; thence N. 82° 55′ E., 3.00 meters to point 7; thence S. 70° 16′ E., 102.70 meters to point 8; thence S. 59° 36′ E., 149.44 meters to point 9; thence S. 56° 17′ E., 243.20 meters to point 10; thence S. 30° 58′ W., 95.07 meters to point of beginning; containing an area of 24,517 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground by old corners; bearings true; declination 1° 02′ E.; date to the cadastral survey, October 13, 1925.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 22nd day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 31

DECLARING THE PERIOD FROM JUNE 28 TO JULY 4 OF EVERY YEAR AS INDEPENDENCE ANNIVERSARY WEEK

WHEREAS, since the proclamation and inauguration of the Republic of the Philippines on July 4, 1946, we have acted in the fine traditions of democracy and freedom, proving ourselves worthy of our independence; and

WHEREAS, it is but natural that we rejoice at the blessings of independence without forgetting our responsibilities as a free and sovereign nation;

NOW, THEREFORE, I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare starting this year the period from June 28 to July 4 of every year as Independence Anniversary Week, during which I enjoin all our people to ponder the significance of our independence to the end that we shall always be worthy of it. The National Committee created in Administrative Order No. 26 dated May 19, 1954, and all succeeding national anniversary committees to be created thereafter shall take charge of, and coordinate, the activities in celebration of the week.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this twenty-sixth day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

[SEAL]

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 1–A

PROHIBITING PUBLIC OFFICERS AND EMPLOYEES FROM ENTERING INTO CERTAIN KINDS OF OFFICIAL TRANSACTIONS WITH REAL OR IMAGINARY RELATIVES OF THE PRESIDENT

I, Ramon Magsaysay, President of the Philippines, by virtue of the powers vested in me by law, do hereby prohibit all officers and employees of the Government who are holding positions of trust and responsibility from dealing directly or indirectly with any of my relatives or the relatives of Mrs. Luz B. Magsaysay, whether by blood or affinity, and

whether real or imaginary, in matters relating to procurement or purchase of supplies and materials, appointment of government personnel, recommendations for positions, or any other matter calling for action or decision, in which the interested party invokes or makes use of my name or that of any member of my family, or of such relationship in order to obtain any favor, concession or privilege either for him or for any other person.

Any officer or employee of the government violating this order shall be dealth with administratively.

Done in the City of Manila, this 6th day of January, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 22

CREATING A COMMITTEE TO INVESTIGATE ALLEGED IRREGULARITIES IN THE LAND SETTLEMENT AND DEVELOPMENT CORPORATION

A Committee is hereby created to investigate alleged irregularities in the Land Settlement and Development Corporation (LASEDECO) composed of the following:

Atty. Jose B. Sapuriada	Chairman
Lt. Col. Angel S. Salcedo	Member
Atty. George U. Alba	Member
Auditor Andres Francia	Member
Atty. Tomas Daradar	Member

For the purpose of the investigation, the Committee is hereby granted all the powers of an investigating committee under sections 71 and 580 of the Revised Administrative Code, including the power to summon witnesses, administer oaths, and take testimony or evidence relevant to the investigation. The Committee is also empowered and authorized to call upon any department, bureau, office, agency, or instrumentality of the Government for such information as it may require in the performance of its work, and, for the purpose of securing such information, it shall have

access to, and the right to examine any books, documents, papers, or records thereof.

The Committee shall submit its report and recommendations within thirty days from the date hereof.

Done in the City of Manila, this 23rd day of April in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 23

MODIFYING ADMINISTRATIVE ORDER NO. 14 DATED MARCH 17, 1954, BY CONSIDERING JUDGE LUIS ORTEGA AS HAVING RESIGNED

Upon further consideration of the administrative case against Judge Luis Ortega of Laguna, who was required to resign under Administrative Order No. 14 dated March 17, 1954, and in the light of the representations contained in his petition for reconsideration of the order, I, Ramon Magsaysay, President of the Philippines, hereby modify said administrative order by considering Judge Luis Ortega as having resigned, effective immediately, with prejudice to reinstatement and to his receiving whatever retirement benefits, if any, he may have earned, but with the right to his receiving the money value of the accumulated vacation and sick leave to his credit, the commutation payment of which is hereby authorized.

Done in the City of Manila, this 1st day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 24

PRESCRIBING RULES AND REGULATIONS GOVERNING THE SELECTION AND APPOINTMENT OF NON-CHRISTIAN STUDENT PENSIONADOS AND DESIGNATING A COMMITTEE TO DETERMINE THE ABILITY AND FITNESS OF APPLICANTS

The following rules and regulations shall govern the selection and appointment of non-Christian student pensionados.

Scope of this scholarship.—This scholarship shall consist only of collegiate and vocational courses offered in the different colleges and schools in the Philippines prescribing graduation from any high school of good standing as a minimum requirement, vocational and short courses preferred.

1. *Who are qualified.*—Only non-Christian inhabitants who are at least high school graduates and have qualified in a competitive examination given for the purpose of testing ability and fitness for scholarship, are eligible for appointment as government pensionados.

2. *Examining Committee.*—The Chief of Local Governments and another official designated by the Executive Secretary shall pass upon and determine the ability and fitness of applicants for appointment as government pensionados by giving appropriate competitive examination for the purpose. The division or city superintendents of schools of provinces and cities where there are applicants for government scholarship shall conduct the said examination on behalf of the Examining Committee herein created. If a city is also the capital of the province, such examination shall be conducted by the Division Superintendent of Schools.

3. *Date and place of examination; transmittal of examination papers.*—The Examining Committee shall prepare the examination questions and the rules and regulations governing the said examination and transmit them separately in sealed envelopes to the Division or City Superintendent of Schools sufficiently in advance of the date of the examination. The examination shall be held in the provincial capital or city where there are applicants, on the second Saturday of May of each year. If, however, the examination cannot be held on the said date owing to unforeseen events, it shall be held the next following Saturday, in which case the Division Superintendent of Schools shall give sufficient notice

thereof in advance to all concerned and/or give the matter the widest publicity. Immediately after the examination, the Division Superintendent of Schools shall forward the examination papers of the applicants in a sealed envelope to the Examining Committee by registered special delivery or air mail, whichever is the quicker.

4. *List and certification of eligibles.*—The Examining Committee shall carefully appraise and grade the examination papers and thereafter submit its report to the Executive Secretary. The report shall contain, among other things, the names of the applicants properly listed in the order of the general ratings obtained by them in the examination.

5. *Selection and appointment.*—The following shall govern the selection for appointment of pensionados. From among the names in the list of eligibles from each province or city the selection shall begin with the one having the highest rating until the allotment for such province or city is filled. Should two or more of them have the same rating in the list of eligibles, the one with higher scholastic records as evidenced by their final grades in the high school at the time of their graduation shall be preferred: *Provided,* That if their final grades are likewise equal, then the one who shall be certified by the Governor or City Mayor and the Congressman of the District as more indigent shall be appointed: *Provided, further,* That if the Governor or City Mayor and the Congressman cannot agree as to who is the more indigent, the selection shall be made by the Executive Secretary whose decision shall be final.

6. *Effectivity.*—This Order shall take effect immediately.

Done in the City of Manila, this 5th day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 25

CREATING A SPECIAL MISSION TO STUDY A PROGRAM OF INTERNATIONAL PUBLICITY AND PUBLIC RELATIONS FOR THE PHILIPPINE GOVERNMENT

There is hereby created a Special Mission to study a program of international publicity and public relations for the Philippine Government. The Mission shall be composed of:

1. Mr. Carlos F. Nivera, editor, *The Philippines Herald.*
2. Mr. Amadeo Dacanay, executive editor, *The Evening News.*
3. Mr. Carlos Quirino, Manila manager, *Pan Asia Newspaper Alliance.*
4. Mr. Eduardo Gregorio, city editor, *Bagong Buhay.*
5. Mrs. Pricila B. Dacanay, secretary.

This Mission will confer with government information agencies and private information media representatives in Europe and the United States on various aspects of international publicity and allied subjects and study the various government machineries for the dissemination of information and publicity.

The Mission will submit a joint report to the President of the Philippines upon its return.

It is understood that the Mission will perform its task at no cost to the Philippine Government since the members of the Mission are traveling on Fulbright funds as guests of the American Press Institute.

Done in the City of Manila, this 11th day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 26

CREATING A NATIONAL COMMITTEE TO TAKE CHARGE OF THE EIGHTH ANNIVERSARY CELEBRATION OF THE REPUBLIC OF THE PHILIPPINES ON JULY 4, 1954

By virtue of the powers vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby create a National Committee to formulate plans and devise ways and means for the appropriate celebration of the Eighth Anniversary of the Republic of the Philippines on July 4, 1954. The Committee shall be composed of the following:

Hon. Sotero Cabahug, Secretary of National Defense	Co-Chairman
Hon. Eleuterio Adevoso, Secretary of Labor	Co-Chairman
Hon. Pacita Madrigal Warns, Administrator of Social Welfare	Member
Hon. Jaime N. Ferrer, Undersecretary of Agriculture and Natural Resources	Member
Brig. General Jesus Vargas, Chief of Staff, AFP	Member
Brig. General Florencio Selga, Chief of Constabulary	Member
Hon. Arsenio H. Lacson, Mayor of Manila	Member
Dr. Vidal A. Tan, President, University of the Philippines	Member
Hon. Teodoro Evangelista, President, Philippine Association of Colleges and Universities	Member
Hon. Antonio de las Alas, President, Chamber of Commerce of the Philippines	Member
Mr. Arsenio Jison, President, Philippine National Bank	Member
Mr. Eduardo Z. Romualdez, President, Rehabilitation Finance Corporation	Member
Mrs. Concepcion M. Henares, President, National Federation of Women's Club	Member
Mr. Eugenio Puyat, President of the Rotary Club	Member
Mr. Amelito Mutuc, President, Philippine Jaycees	Member
Mr. Mariano V. del Rosario, District Governor, Lions International	Member
Mr. V. Lontok	Executive Secretary

The Committee shall meet at the call of the Co-Chairmen or either of them, and, for the purpose of discharging its functions, may create such sub-committees as may be necessary.

Done in the City of Manila, this 19th day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 27

FURTHER AMENDING ADMINISTRATIVE ORDER NO. 13 DATED OCTOBER 12, 1946, AS AMENDED, CREATING THE PHILIPPINE PORT COMMISSION

Administrative Order No. 13, dated October 12, 1946, entitled "Creating A Commission, to be known as the Philippine Port Commission, to perform the functions of the committee created under Administrative Order No. 35, dated 29 May 1946, and to act as the agency of the Republic of the Philippines in connection with the Rehabilitation, Improvement and Construction of Port and Harbor facilities in the Philippines under section 303 (*a*) of the Philippine Rehabilitation Act of 1946", as amended, is hereby further amended so as to make the composition thereof as follows:

The Undersecretary of Public Works and Communications	Chairman
The Commissioner of Customs	Vice-Chairman
Major Enrique Razon	Member
The Director of Public Works	Member
The Commander of the Philippine Navy	Member
The Director of Quarantine	Member
The Chief of Engineers, Armed Forces of the Philippines, or his representative	Member
The Director of Coast and Geodetic Survey	Member

Done in the City of Manila, this 20th day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 28

CREATING A COMMITTEE TO STUDY AND RECOMMEND MEASURES TO IMPROVE THE EFFICIENCY AND EFFECTIVENESS OF THE MOTOR VEHICLES OFFICE IN ENFORCING THE MOTOR VEHICLES LAW

By virtue of the powers vested in me by law, I, Ramon Magsaysay, President of the Philippines, do hereby create a Committee to study and recommend measures to improve the efficiency and effectiveness of the Motor Vehicles Office in enforcing the Motor Vehicles Law. The Committee shall be composed of the following:

1. Mr. Francisco Benitez, representing Taxicab companies ..... Chairman
2. Mr. G. B. Tengco, representing the Philippine Motor Association ..... Member
3. Mr. Emilio Gonzales Lao, representing Provincial bus companies ..... Member
4. Mr. Manuel Aycarde, representing the Philippine Safety Council ..... Member
5. Mr. Felipe Monserrat, representing Taxicab companies ..... Member
6. Mr. Antonio Reyes, representing the Budget Commission ..... Member
7. Mr. Antonio J. Villegas, representing the Presidential Complaints and Action Committee .... Member

The Committe is authorized to call upon any department, bureau, office, agency or instrumentality of the Government, or upon any officer or employee thereof, for such assistance and information as it may require in the performance of its work, and, for the purpose of securing such information, it shall have access to, and the right to examine any books, documents, papers, or records thereof.

The Committee shall submit to the President its report and recommendation not later than June 30, 1954.

Done in the City of Manila, this 22nd day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 29

CREATING A COMMITTEE TO FINISH THE INVESTIGATION OF THE ADMINISTRATIVE CHARGES FILED AGAINST LT. COL. VICTOR H. DIZON

A committee to finish the investigation of the administrative charges filed by Mr. Cirilo Damian against Lt. Col. Victor H. Dizon of the Philippine Air Force for alleged irregularities in connection with the repair and seal-coating of Runway 13–31 of the Manila International Airport during his incumbency as Civil Aeronautics Administrator is hereby created composed of the following:

Mr. Jesus Avanceña, Solicitor, Office of the Solicitor General ..... Chairman
Mr. Eliodoro de la Rosa, Counsel, Civil Aeronautics Board ..... Member
Mr. Luis O. Yap, Auditor, National Power Corporation ..... Member

For the purpose of the investigation, the Committee is hereby granted all the powers of an investigating committee including the power to summon witnesses, administer oaths, and take testimony or evidence relevant to the investigation. The Committee is also empowered and authorized to call upon any department, bureau, office, agency or instrumentality of the Government for such information as it may require in the performance of its work and, for the purpose of securing such information, it shall have access to and the right to examine any books, documents, papers, or records thereof.

The Committee shall submit its report and recommendations within the shortest time possible.

Done in the City of Manila, this twenty-sixth day of May, in the year of Our Lord, nineteen hundred and fifty-four, and of the Independence of the Philippines, the eighth.

RAMON MAGSAYSAY
President of the Philippines

By the President:

FRED RUIZ CASTRO
Executive Secretary

REPUBLIC ACTS

Enacted during the Third Congress of the Philippines
First Session

H. No. 92

[REPUBLIC ACT NO. 977]

AN ACT AUTHORIZING THE PRESIDENT OR HIS REPRESENTATIVE TO ACCEPT DONATIONS FOR THE CONSTRUCTION, REPAIR AND MAINTENANCE OF ARTESIAN WELLS OR OTHER DRINKING WATER SOURCES ANYWHERE IN THE PHILIPPINES AND PROVIDING FOR THE PROPER USE OF SUCH DONATIONS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The President or his representative is authorized to accept from any person, association, corporation, or government, all donations to the Republic of the Philippines for the construction, repair and maintenance of artesian wells or similar devices anywhere in the Philippines, including the development of spring sources into small gravity systems, and to sign all necessary papers in connection therewith on behalf of the Republic.

SEC. 2. All cash donations made and received under this Act shall be accounted for and audited strictly in accordance with existing laws and shall be deposited in the National Treasury to form a special trust fund to be known as the "Artesian Well Fund". No part of this fund shall be disbursed, used or expended except for the construction of artesian wells and other drinking water sources anywhere in the Philippines, in accordance with appropriations as may be provided by law and existing regulations.

SEC. 3. All other kinds of donations made and received under this Act shall be inventoried, audited and accounted for strictly in accordance with existing laws: *Provided, however,* That property donated which cannot be directly used for the construction of artesian wells and other drinking water sources shall be sold at public auction, under the supervision of the General Auditing Office, to the highest bidder after advertising the same for not less than sixty days by printed notice in the Official Gazette and by notices conspicuously posted for a like period in at least four public places in the community

where the articles or property are located and to be sold, and the proceeds of such sale shall be deposited in the National Treasury to form part of the Artesian Well Fund.

SEC. 4. The President of the Philippines shall issue such rules and regulations as may be necessary to carry out the purposes of this Act.

SEC. 5. Donors under this Act shall be allowed to include such donations as deductions in their income tax returns.

SEC. 6. This Act shall take effect upon its approval.

Enacted without Executive approval, May 5, 1954.

H. No. 2391

[REPUBLIC ACT NO. 978]

AN ACT MAKING THE APPROPRIATION OF ONE HUNDRED AND FIFTY THOUSAND PESOS FOR THE DOMESTIC AIR MAIL SERVICE AVAILABLE FOR EXPENDITURE TO CONTINUE THE SERVICES OF POSTAL EMPLOYEES IN MANILA AND PROVINCIAL POST OFFICES TO COPE WITH THE INCREASED VOLUME OF POSTAL BUSINESS AND FOR THE EMPLOYMENT OF TEMPORARY EMPLOYEES, LABORERS AND HELPERS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The sum of one hundred and fifty thousand pesos appropriated in item H–IV–15, of Republic Act Numbered Nine hundred and six, "for the operation of the domestic air mail service in accordance with Commonwealth Act Numbered Two hundred and twenty-three", is made available for expenditure "to continue the services of postal employees in Manila and provincial post offices to cope with the increased volume of postal business and for the employment of temporary employees, laborers and helpers.

SEC. 2. This Act shall take effect as of May first, nineteen hundred and fifty-four.

Approved, May 18, 1954.

H. No. 1360

[REPUBLIC ACT NO. 979]

AN ACT AMENDING REPUBLIC ACT NUMBERED NINE HUNDRED AND THIRTY-EIGHT ENTITLED "AN ACT GRANTING MUNICIPAL OR CITY BOARDS AND COUNCILS THE POWER TO REGULATE THE ESTABLISHMENT, MAINTE-

NANCE AND OPERATION OF CERTAIN PLACES OF AMUSEMENT WITHIN THEIR RESPECTIVE TERRITORIAL JURISDICTIONS."

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section one of Republic Act Numbered Nine hundred and thirty-eight is hereby amended to read as follows:

"SECTION 1. The municipal or city board or council of each chartered city and the municipal council of each municipality and municipal district shall have the power to regulate or prohibit by ordinance the establishment, maintenance and operation of night clubs, cabarets, dancing schools, pavilions, cockpits, bars, saloons, bowling alleys, billiard pools, and other similar places of amusement within its territorial jurisdiction: *Provided however,* That no such places of amusement mentioned herein shall be established, maintained and/or operated within a radius of five hundred lineal meters from any public buildings, schools, hospitals and churches. *And provided, further,* That this Act shall not apply to establishments operating by virtue of Commonwealth Act Numbered Four hundred eighty-five nor to pre-war establishments that owned, before the outbreak of the war on December seven, nineteen hundred and forty-one, concrete building for the purpose and have reconstructed such building and resumed operation before the approval of this Act."

SEC. 2. Any law, executive order or parts thereof, inconsistent with the provisions of this Act are hereby repealed.

SEC. 3. This Act shall take effect upon its approval.

Approved, May 21, 1954.

H. No. 1367

[REPUBLIC ACT NO. 980]

AN ACT GRANTING THE LYCEUM OF THE PHILIPPINES A FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A RADIO BROADCASTING STATION IN THE CITY OF MANILA FOR EDUCATIONAL PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the provisions of the Constitution, as well as of Act Numbered Three thousand eight hundred forty-six, entitled "An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes"; Act

Numbered Three thousand nine hundred ninety-seven, known as the Radio Broadcasting Law; Commonwealth Act Numbered One hundred forty-six, known as the Public Service Act, and their amendments, and other applicable laws, not inconsistent with this Act, the Lyceum of the Philippines is hereby granted a franchise to construct, maintain and operate, for educational purposes and in the public interest, a radio broadcasting station in the City of Manila.

SEC. 2. This franchise shall continue for a period of twenty-five years from the date the said station shall be put in operation, and is granted upon the express condition that the same shall be void unless the construction of said station be begun within six months from the date of approval of this Act and be completed within two years from said date.

SEC. 3. This franchise is likewise made upon the express condition that the grantee shall contribute to the public welfare, shall assist in the functions of public information and education, shall conform to the ethics of honest enterprise, and shall not use its station for the dissemination of deliberately false information or willful misrepresentation, or to the detriment of the public health, or to incite, encourage or assist in subversive or treasonable acts.

SEC. 4. The grantee's radio broadcasting station shall not be put in actual operation until the Secretary of Public Works and Communications shall have allotted to the grantee the frequency and wave length to be used under this franchise and issued to the grantee a license for such use.

SEC. 5. The radio broadcasting station of the grantee shall be so constructed and operated and the wave length so selected as to avoid interference with existing radio stations and to permit of the expansion of the grantee's services.

SEC. 6. A special right is reserved to the President of the Philippines, in time of war, rebellion, public peril, calamity, disaster or disturbance of peace or order, to cause the closing of said station or to authorize the temporary use and operation thereof by any department of the Government without compensating the grantee for the use of said station during the period when they shall be so operated.

SEC. 7. The grantee shall be liable to pay the same taxes, unless exempted therefrom, on its real estate, buildings, and personal property, exclusive of the franchise, as other persons or corporations are now or hereafter may be required by law to pay.

SEC. 8. The franchise hereby granted shall be subject to amendment, alteration, or repeal by the Congress of the Philippines when the public interest so requires.

SEC. 9. Acceptance of this franchise shall be given in writing by the grantee within six months after the approval of this Act. When so accepted, the grantee shall be empowered to exercise the privileges granted thereby.

SEC. 10. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this franchise nor the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other company or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. Any corporation to which this franchise may be sold, transferred, or assigned, shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person, firm, company, corporation or other commercial or legal entity to which this franchise is sold, transferred, or assigned shall be subject to all conditions, terms, restrictions and limitations of this franchise as fully and completely and to the same extent as if the franchise had been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 11. This franchise shall not be interpreted as an exclusive grant of the privileges herein provided for.

SEC. 12. This Act shall take effect upon its approval.

Approved, May 22, 1954.

H. No. 1795

[REPUBLIC ACT No. 981]

AN ACT ESTABLISHING THE NEW CAPITAL OF THE PROVINCE OF CAVITE, AND PROVIDING A CHARTER THEREFOR, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

GENERAL PROVISIONS

SECTION 1. *Incorporation, powers.*—The territory not exceeding one thousand hectares, located at or near the intersection of the Tanza–Indang Road and the proposed Naic–Dasmariñas Road, in the Province of Cavite, the exact boundaries and limits of which to be defined as herein provided, shall be a political subdivision to be known as the City of Trece Martires, and by that name shall have perpetual succession; have and use a common seal which

it may alter at pleasure; sue and be sued, and prosecute and defend to final judgment and execution; take, purchase, receive, hold, lease, convey, and dispose of real and personal property, for the benefit of the city, within or without its corporate limits; contract and be contracted with; and execute all the powers hereinafter conferred, as well as those generally and ordinarily conferred upon chartered cities.

SEC. 2. *Territory.*—The District Engineer of the Province of Cavite shall, within three months after the approval of this Act, survey and, by proper metes and bounds, determine the territory of the City of Trece Martires, indicating in the plan, among others, avenues, streets, plazas, parks, and lots for public use. Upon the completion of such survey, the Director of Public Works shall certify the same to the President of the Philippines, who shall by executive order define the boundaries and limits of the territory of the city.

The Provincial Board of Cavite shall have power to purchase, accept gifts or donations of, or institute expropriation proceedings concerning, such lands as may be within the territory of the city for the general interests of the city or for public use.

SEC. 3. *Jurisdiction of city for police purposes.*—The jurisdiction of the City of Trece Martires for police purposes shall extend within the territorial limits of the said city; and for the purpose of protecting and insuring the purity and quantity of water supply of the city, such police jurisdiction shall also extend over all territory within the drainage area of such water supply, or within one hundred meters of any reservoir, conduit, canal, aqueduct, pumping station or watershed, used in connection with the city water service. The municipal court of the city shall have concurrent jurisdiction with the justice of the peace courts of the municipalities within which the said territory within the drainage area and the said space of one hundred meters are situated to try crimes or offenses committed therein. The court first taking jurisdiction of such an offense shall thereafter retain exclusive jurisdiction thereof. All fines, forfeitures, fees and costs, imposed by reason of offenses committed within the said space of one hundred meters and territory within the said drainage area shall accrue, not to the treasury of the City of Trece Martires but to the treasury of the municipality in which the said space or territory in which the offense committed is located.

SEC. 4. *City not liable for damages.*—The city shall not be liable or held for damages or injuries to persons or property arising from the failure of the City Council, the City Mayor, or any other city officer or employee, to

enforce the provisions of this Charter, or any other law or ordinance, or from negligence of said City Council, Mayor or other city officers or employees while enforcing or attempting to enforce said provisions.

CITY OFFICES AND OFFICERS IN GENERAL

SEC. 5. *Chief officials of city government.*—The chief officials of the government of the city are the City Mayor, members of the City Council, city engineer, city treasurer-assessor, city fiscal, city health officer, chief of police, judge of the municipal court and secretary of the City Mayor.

The Provincial Governor, the members of the provincial board, the district engineer, the provincial treasurer, the provincial fiscal, and the district health officer of the Province of Cavite, shall be *ex officio* City Mayor, members of the City Council, city engineer, city treasurer-assessor, city fiscal, and city health officer of the city, respectively.

The secretary of the Provincial Board of Cavite shall act as secretary to the City Mayor and of the City Council.

SEC. 6. *General powers and duties of the City Mayor.*—Unless otherwise provided by law, the City Mayor shall have immediate control over the executive and administrative functions of the different offices of the city, subject to the authority and supervision of the Department Head. He shall have the following general powers and duties:

(*a*) To comply with and enforce and give the necessary orders for the faithful enforcement and execution of the laws and ordinances in effect within the jurisdiction of the city.

(*b*) To safeguard all the lands, buildings, records, moneys, credits, and other property and rights of the city, and subject to the provisions of this Charter, have control of all its property.

(*c*) To see that all taxes and other revenues of the city are collected and applied in accordance with appropriations to the payment of the municipal expenses.

(*d*) To cause to be instituted judicial proceedings to recover property and funds of the city wherever found, to cause to be defended all suits against the city, and otherwise to protect the interests of the city.

(*e*) To see that the executive officers and employees of the city properly discharge their respective duties.

(*f*) To examine and inspect the books, records and papers of all officers, agents, and employees of the city over whom he has executive supervision and control at least once a year, and whenever occasion arises. For this purpose he shall be provided by the City Council with such clerical or other assistance as may be necessary.

(*g*) To give such information and recommend such measures to the City Council as he shall deem advantageous to the city.

(*h*) To represent the city in all its business matters and sign on its behalf all its bonds, contracts, and obligations made in accordance with law or ordinance.

(*i*) To submit to the City Council at least two months before the beginning of each fiscal year a budget of receipts and expenditures of the city.

(*j*) To receive, hear, and decide as he may deem proper the petitions, complaints, and claims concerning all classes of municipal matters of an administrative or executive character.

(*k*) To grant or refuse municipal licenses or permits of all classes and to revoke the same for violation of the conditions upon which they were granted, or if acts prohibited by law or municipal ordinance are being committed under the protection of such licenses or in the premises in which the business for which the same have been granted is carried on, or for any other good reason of general interest.

(*l*) To exempt, with the concurrence of the division superintendent of schools, deserving poor pupils from the payment of school fees or of any part thereof.

(*m*) To take such emergency measures as may be necessary to avoid fires and floods, and mitigate the effects of storms and other public calamities.

(*n*) To submit an annual report to the Department Head.

(*o*) To perform such other duties and exercise such other executive powers as may be prescribed by law or ordinance.

SEC. 7. *Secretary to City Mayor; his duties.*—The secretary shall have charge and custody of all records and documents of the city and of any office or department thereof for which provision is not otherwise made; shall keep the corporate seal and affix the same with his signature to all ordinances and resolutions signed by the City Mayor and to all other official documents and papers of the government of the city as may be required by law or ordinance; shall attest all executive orders, proclamations, ordinances, and resolutions signed by the City Mayor; shall, upon request, furnish certified copies of all city records and documents in his charge which are not of a confidential character and shall charge fifty centavos for each one hundred words including the certificate, such fees to be paid directly to the city treasurer-assessor; and shall perform such other duties as the City Mayor may require of him.

SEC. 8. *Secretary of the City Council; his duties.*—The secretary shall be in charge of the records of the City Council. He shall keep a full record of the proceedings of the City Council, and file all documents relating thereto; shall record, in a book kept for that purpose, all ordinances, and all resolutions and motions directing the payment of money or creating liability, enacted or adopted by the City Council, with the dates of passage of the same and of the publication of ordinances; shall keep a seal, circular in form, with the inscription "City Council—City of Trece Martires", and affix the same, with his signature, to all ordinances and other official acts of the City Council, and shall present the same for signature to the presiding officer of the City Council; shall cause each ordinance passed to be published as herein provided; shall, upon request, furnish certified copies of all records of the City Council of public character in his charge under the seal

of his office and charge fifty centavos for each one hundred words including the certificate, such fees to be paid directly to the city treasurer; and shall keep his office and all records therein which are not of a confidential character open to public inspection during usual business hours.

SEC. 9. *Methods of transacting business by City Council.*— The City Mayor, as chief executive of the city, shall be a member and presiding officer of the City Council. Unless the Department Head orders otherwise, the City Council shall hold one ordinary session for the transaction of business during each week on days which it shall fix by resolution, and such extraordinary sessions, as may be called by the City Mayor. It shall sit with open doors, unless otherwise ordered by an affirmative vote of all the members. It shall keep a record of its proceedings and determine its rules of procedure not herein set forth. Two members of the City Council shall constitute a quorum for the transaction of business. But a smaller number may adjourn from day to day and may compel the immediate attendance of any member absent without good cause by issuing to the police of the city an order for his arrest and production at the session under such penalties as shall have been previously prescribed by ordinance. Two affirmative votes shall be necessary for the passage of any ordinance, or of any resolution or motion directing the payment of money or creating liability, but other measures shall prevail upon the majority votes of the members present at any meeting duly called and held. The *ayes* and *nays* shall be taken and recorded upon the passage of all ordinances, upon all resolutions or motions directing the payment of money or creating liability, and at the request of any member, upon any other resolution or motion. Each approved ordinance, resolution or motion shall be sealed with the seal of the City Council, signed by the presiding officer and the secretary of the City Council and recorded in a book kept for the purpose, and shall, on the day following its passage, be posted by the secretary at the main entrance to the city hall, and shall take effect and be in force on and after the tenth day following its passage unless otherwise stated in said ordinance, resolution or motion.

The Department Head shall have full power to disapprove directly, in whole or in part, any ordinance, resolution or motion of the City Council if he finds said ordinance, resolution or motion or parts thereof, beyond the powers conferred upon the City Council.

SEC. 10. *General powers and duties of the City Council.*— Except as otherwise provided by law, and subject to the conditions and limitations thereof, the City Council shall have the following legislative powers:

(*a*) To provide for the levy and collection of taxes for general and special purposes in accordance with law.

(*b*) To make all appropriations for the expenses of the government of the city: *Provided*, That without the express authorization of the President of the Philippines, the appropriation for the payment of salaries and wages of officers and employees of the city government for any fiscal year shall not be more than sixty per cent of the expected revenue of the city for such fiscal year.

(*c*) To fix with the approval of the Department Head the number and salaries of officials and employees of the city, subject to the limitations of this Act.

(*d*) To authorize with the approval of the Department Head the free distribution of medicines to the employees and laborers of the city whose salary or wage does not exceed one hundred and twenty pesos per month or four pesos per day, and of evaporated or fresh native milk to indigent mothers residing in the city and of bread and light meals to indigent children ten years or less of age residing in the city, the distribution to be made under the direct supervision and control of the City Mayor.

(*e*) To fix the tariff of fees and charges for all services rendered by the City or any of its offices, branches or officials.

(*f*) To provide for the erection and maintenance or the rental of the necessary buildings for the use of the city.

(*g*) To provide for the establishment and maintenance of public schools; and, except as otherwise provided by law, to fix, with the approval of the Director of Public Schools, reasonable matriculation and/or tuition fees for instruction therein.

(*h*) To establish and maintain or aid in the establishment and maintenance of vocational schools and institutions of higher learning conducted by the National Government or any of its subdivisions and agencies; and, with the approval of the Director of Pubic Schools, to fix reasonable tuition fees for instruction in the vocational schools and in the institutions of higher learning supported by the city.

(*i*) To provide for and maintain an efficient police force for the maintenance of law and order in the city, and make all necessary police ordinances, with a view to the confinement and reformation of vagrants, disorderly persons, mendicants, prostitutes, and persons convicted of violating any of the ordinances of the city.

(*j*) To provide for and maintain an official fire force and provide engine houses, fire engines, hose carts or trucks, hooks and ladders, and other equipment for the prevention and extinguishment of fires, and to regulate the management and use of the same.

(*k*) To establish fire zones, determine the kinds of buildings or structures that may be erected within their limits, regulate the manner of constructing and repairing the same, and fix the fees for permits for the construction, repair, or demolition of buildings and other structures.

(*l*) To regulate the use of lights in stables, shops, and other buildings and places and to regulate and restrict the issuance of permits for the building of bonfires and the use of firecrackers, fireworks, torpedoes, candles, skyrockets, and other pyrotechnic displays, and to fix the fees for such permits.

(*m*) To make regulations to protect the public from conflagrations and to prevent and mitigate the effects of famine, floods, storms and other public calamities, and provide relief for victims thereof.

(*n*) To regulate and fix the amount of the license fees for the following: hawkers, peddlers, hucksters, not including hucksters or peddlers who sell only native vege-

tables, fruits or foods, personally carried by the hucksters or peddlers, auctioneers, plumbers, barbers, collecting agencies, mercantile agencies, shipping and intelligence offices, private detective agencies, advertising agencies, beauty parlors, massagists, manicurists, chiropodists, hair dressers, tattooers, jugglers, acrobats, hotels, clubs, restaurants, cafes, lodging houses, boarding houses, livery garages, livery stables, boarding stables, dealers in large cattle, public billiard tables, public pool tables, laundries, cleaning and dyeing establishments, public warehouses, circuses, and other similar parades, public vehicles, race tracks, horse races, bowling alleys, shooting galleries, merry-go-rounds and other similar riding devices, pawnshops, dealers in second-hand merchandise, junk dealers, brewers, distillers, rectifiers, money changers and brokers, public ferries, theaters, theatrical performances, cinematographs, public exhibitions, circus and other performances and places of amusements, and the keeping, preparation, and sale of meat, poultry, fish, game, butter, cheese, lard, vegetables, bread, and other provisions.

(*o*) To tax and fix the license fees for dealers in automobiles or accessories or both, and retail dealers in merchandise, which dealers are not yet subject to the payment of any municipal tax. For the purpose of taxation, these retail dealers shall be classified as (1) retail dealers in general merchandise, and (2) retail dealers exclusively engaged in the sale of (*a*) textiles including knitted wares or goods, (*b*) hardwares including glasswares, cooking utensils, electrical goods and construction materials, (*c*) groceries including toilet articles except perfumery, (*d*) drugs including medicines and perfumeries, (*e*) books, including stationery, paper, and office supplies, (*f*) jewelry, (*g*) slippers, and (*h*) arms, ammunitions and sporting goods.

(*p*) To tax, fix the license fee for, regulate the business and fix the location of match factories, blacksmith shops, foundries, steam boilers, lumber mills, lumber yards, shipyards, the storage and sale of gunpowder, tar, pitch, resin, coal, oil, gasoline, benzine, turpentine, hemp, cotton, nitroglycerine, petroleum, or any of the products thereof, and of all other highly combustible or explosive materials, and other establishments likely to endanger the public safety or give rise to conflagrations or explosions, and, subject to the rules and regulations issued by the Director of Health in accordance with law, tanneries, lard factories, renderies, tallow chandleries, embalmers, and funeral parlors, bone factories, and soap factories.

(*q*) To tax, fix the license fee for, and regulate the sale, trading in or disposal of alcoholic or malt beverages, wines, and mixed or fermented liquors, including *tuba, basi, tapuy*, offered for retail sale.

(*r*) To impose a tax on all products or commodities manufactured or produced in, or brought to, the city and removed therefrom.

(*s*) To impose a sales tax not exceeding one *per centum* of the gross value in money of all articles sold, bartered, exchanged or transferred within the city.

(*t*) To regulate the method of using steam engines and boilers, and all other motive powers other than marine or belonging to the Government of the Philippines; to provide for the inspection thereof and for a reasonable fee for

such inspection, and to regulate and fix the fees for the licenses of the engineers engaged in operating the same.

(*u*) To provide for the prohibition and suppression of riots, affrays, disturbances, and disorderly assemblies; houses of ill fame and other disorderly houses; gaming houses, gambling and all fraudulent devices for the purposes of obtaining money or property; prostitution, vagrancy, intoxication, figthing, quarrelling, and all disorderly conduct; the printing, circulation, exhibition or sale of obscene pictures, books, or publications, and for the maintenance and preservation of peace and good morals.

(*v*) To regulate and fix the license fees for the keeping of dogs, to authorize their impounding and destruction when running at large, contrary to ordinances, and to tax and regulate the keeping or training of fighting cocks.

(*w*) To establish and maintain municipal pounds; to regulate, restrain and prohibit the running at large of domestic animals, and provide for the distraining, impounding and sale of the same for the penalty incurred, and the cost of the proceedings; and to impose penalties upon the owners of said animals for the violation of any ordinance in relation thereto.

(*x*) To prohibit and provide for the punishment of cruelty to animals.

(*y*) To regulate the inspection, weighing and measuring of brick, lumber, coal, and other articles of merchandise.

(*z*) To regulate, fix the location of, and fix the license fees for the establishment and operation of night clubs, dancing schools, dance halls, cabarets, cockpits and other places of amusement.

(*aa*) Subject to the provisions of existing law, to provide for the laying out, construction, and improvement, and to regulate the use of streets, avenues, alleys, sidewalks, parks, cemeteries, and other public places; to provide for lighting, cleaning, and sprinkling of streets and public places; to regulate, fix license fees for, and prohibit the use of the same for processions, signs, signposts, awnings, awningposts, the carrying or displaying of banners, placards, advertisements, or hand bills, or the flying of signs, flags, or banners, whether along, across, over, or from buildings along the same; to prohibit the placing, throwing, depositing, or leaving of obstacles of any kind, offal, garbage, refuse or other offensive matter or matters liable to cause damage in the streets and other public places, and to provide for the collection and disposition thereof; to provide for the inspection of, fix the license fees for, and regulate the openings in the same for the laying of gas, water, sewer, and other pipes, the building and repair of the tunnels, sewers, and drains, and all structures in and under the same, and the erecting of poles and the stringing of wires therein; to provide for and regulate crosswalks, curbs, and gutters therein; to name streets without name and provide for and regulate the numbering of houses and lots fronting thereon or in the interior of the blocks; to regulate traffic and sales upon the streets and other public places; to provide for the abatement of nuisances in the same and punish the author or owners thereof; to provide for the construction and maintenance, and regulate the use of bridges, viaducts, and culverts; to prohibit or regulate ball playing, kite

flying, hoop rolling, and other amusements which may annoy persons using the streets and public places, or frighten horses or other animals; to regulate the speed of horses and other animals, motor and other vehicles, cars, and locomotives within the limits of the city; to regulate the locating, constructing, and laying of the track of electric, and other forms of railroad in the streets or other public places of the city authorized by law; unless otherwise provided by law, to provide for and change the location, grade, and crossings of railroads, and to compel any such railroad to raise or lower its tracks to conform to such provisions or changes; and to require railroad companies to fence their property, or any part thereof, and to construct and repair ditches, drains, sewers, and culverts along and under the tracks, so that the natural drainage of the streets and adjacent property shall not be obstructed.

(*bb*) To provide for the construction and maintenance of, and regulate the navigation on, canals and water courses within the city and provide for the cleansing and purification of the same; unless otherwise provided by law, to provide for the construction and maintenance, and regulate the use of public landing places, and those of private ownership; and to provide for or regulate the drainage and filling of private premises when necessary in the enforcement of sanitary rules and regulations issued in accordance with law.

(*cc*) To provide for the maintenance of waterworks for the purposes of supplying water to the inhabitants of the city, and for the purification of the sources of supply and the places through which the same passes, and to regulate the consumption and use of the water; to fix, subject to the provisions of the Public Service Law, and provide for the collection of rents therefor; and to regulate the construction, repair, and use of hydrants, pumps, cisterns, and reservoirs.

(*dd*) To provide for the establishment and maintenance and regulate the use, of public drains, sewers, latrines, and cesspools.

(*ee*) Subject to the rules and regulations issued by the Director of Health in accordance with law, to provide for the establishment, maintenance and fix the fees for the use of, and regulate public stables, laundries and baths, and public markets and prohibit the establishment or operation within the city limits of public markets by any person, entity, association, or corporation other than the city.

(*ff*) To establish or authorize the establishment of slaughterhouses, to provide for their veterinary or sanitary inspection, to regulate the use of the same, and to charge reasonable slaughter fees. No fees shall be charged for veterinary or sanitary inspection of meat from large cattle or other domestic animals slaughtered outside the city, when such inspection was had at the place where the animals were slaughtered.

(*gg*) To regulate, inspect and provide measures preventing any discrimination or the exclusion of any race or races in or from any institution, establishments, or service open to the public within the city limits, or in the sale and supply of gas or electricity, or in the telephone

and street-railway service; to fix and regulate charges therefor where the same have not been fixed by national law; to regulate and provide for the inspection of all gas, electric, telephone, and street-railway conduits, mains, meters, and other apparatus, and provide for the condemnation, substitution or removal of the same when defective or dangerous.

(*hh*) To declare, prevent, and provide for the abatement of nuisances; to regulate the ringing of bells and the making of loud or unusual noises; to provide that owners, agents, or tenants of buildings or premises keep and maintain the same in sanitary condition, and that, in case of failure to do so within sixty days from the date of serving a written notice, the city health officer shall cause the same to be kept in sanitary condition, the cost thereof to be assessed to the owner to the extent of not to exceed sixty *per centum* of the assessed value, which cost shall constitute a lien against the property; and to regulate or prohibit or fix the license fees for the use of property on or near public ways, grounds, or places, or elsewhere within the city, for a display of electric signs or the erection or maintenance of billboards or structures of whatever material erected, maintained, or used for the display of posters, signs, or other pictorial or reading matter, except signs displayed at the place or places where the profession or business advertised thereby is in whole or in part conducted.

(*ii*) To provide for the enforcement of the rules and regulations issued by the Director of Health, and by ordinance to prescribe penalties for violations of such rules and regulations.

(*jj*) To extend its ordinances over all waters within the city, and over any boat or other floating structures thereon and for the purpose of protecting and insuring the purity of the water supply of the city, over all territory within the drainage area of such water supply, and within one hundred meters of any reservoir, conduit, canal, aqueduct, or pumping station used in connection with the city water service.

(*kk*) To regulate any other business or occupation being conducted within the city not specifically mentioned in the preceding paragraphs, and to impose a license fee upon all persons engaged in the same or who enjoy privileges in the city.

(*ll*) To grant fishing and fishery privileges subject to the provisions of the Fisheries Act.

(*mm*) To fix the date of the holding of a fiesta in the city not oftener than once a year and to alter, not oftener than once in three years, the date fixed for the celebration thereof.

(*nn*) To enact all ordinances it may deem necessary and proper for the sanitation and safety, the furtherance of the prosperity, and the promotion of the morality, peace, good order, comfort, convenience, and general welfare of the city and its inhabitants, and such others as may be necessary to carry into effect and discharge the powers and duties conferred by this Charter; and to fix penalties for the violation of ordinances, which shall not exceed a two hundred peso fine or six months imprisonment, or both such fine and imprisonment for a single offense.

SEC. 11. *Restrictive provisions.*—No commercial sign, signboard, or billboard shall be erected or displayed on public lands, premises, or buildings. If after due investigation, and having given the owners an opportunity to be heard, the City Mayor shall decide that any sign, signboard, or billboard displayed or exposed in public view is offensive to the sight or is otherwise a nuisance, he may order the removal of such sign, signboard, or billboard, and if same is not removed within ten days after he has issued such order, he may himself cause its removal, and the sign, signboard, or billboard shall thereupon be forfeited to the city and the expenses incident to the removal of the same shall become a lawful charge against any person or property liable for the erection or display thereof.

SEC. 12. *Powers and duties of heads of city offices.*—The city engineer, city treasurer-assessor, city fiscal and city health officer and other heads of offices of the city shall be in control of their respective offices under the direction and supervision of the City Mayor, and each shall possess such powers as may be prescribed herein or by ordinance. Each shall certify to the correctness of all payrolls and vouchers of his office covering the payment of money be-before payment, except as herein otherwise expressly provided. At least three months before the beginning of each fiscal year, each shall prepare and present to the City Mayor an estimate of the receipts and appropriation necessary for the operation of his office during the ensuing fiscal year, and shall submit therewith such information for purposes of comparison as the City Mayor may desire. Each shall submit to the City Mayor as often as required reports covering the operations of his office.

In case of the absence or sickness, or inability to act for any other reason, of the head of one of the city offices, the officer next in charge of that office shall act in his place with authority to sign all necessary papers, vouchers, requisitions, and similar documents.

SEC. 13. *Appointment and removal of officials and employees.*—The President of the Philippines shall appoint with the consent of the Commission on Appointments, the judge and auxiliary judge of the municipal court, the chief of police and fire force, and other heads of offices as may be created. Except the judge and auxiliary judge of the municipal court, said officers shall hold office at the pleasure of the President.

All other officers and employees of the city whose appointment is not otherwise provided for by law shall be appointed by the City Mayor upon the recommendation of the corresponding head of office of the city in accordance with the Civil Service Law and they shall be suspended or removed in accordance with law.

SEC. 14. *Officers not to engage in certain transactions.*—It shall be unlawful for any city officer, directly or indirectly, individually or as a member of a firm, to engage in any business transaction with the city, or with any of its authorized officials, boards, agents, or attorneys, whereby money is to be paid, directly or indirectly, out of the resources of the city to such person or firm; or to purchase any real estate or other property belonging to the city, or which shall be sold for taxes or assessments, or by virtue of legal process at the suit of the city; or to be surety for

any person having a contract or doing business with the city, for the performance of which security may be required; or to be surety on the official bond of any officer of the city.

SEC. 15. *The City Engineer—His powers and duties.*— The city engineer shall have the following powers and duties:

(*a*) He shall have charge of all the surveying and engineering work of the city, and shall perform such service in connection with public improvements, or any work entered upon or proposed by the city, or any department thereof, as may require the skill and experience of a civil engineer.

(*b*) He shall ascertain, record, and establish monuments of the city survey and from thence extend the survey of the city, and locate, establish, and survey all city property and also private property abutting on the same, whenever directed by the City Mayor.

(*c*) He shall prepare and submit plans, maps, specifications and estimates for buildings, streets, bridges, docks, and other public works, and supervise the construction and repair of the same.

(*d*) He shall make such tests and inspections of engineering materials used in construction and repair as may be necessary to protect the city from the use of materials of a poor or dangerous quality.

(*e*) He shall have the care of all public buildings, when erected, including markets and slaughterhouses and all buildings rented for city purposes, and of any system now or hereafter established by the city for lighting the streets, public places, or public buildings.

(*f*) He shall have the care of all public streets, parks and bridges, and shall maintain, clean, sprinkle, and regulate the use of the same for all purposes as provided by ordinance; shall collect and dispose of all garbage, refuse, the contents of closets, vaults, and cesspools, and all other offensive and dangerous substances within the city.

(*g*) He shall prevent the encroachment of private buildings and fences on the streets and public places of the city.

(*h*) He shall have the care and custody of the public system of waterworks and sewers, and all sources of water supply, and shall control, maintain, and regulate the use of the same, in accordance with the ordinance relating thereto; shall inspect and regulate the use of all private systems for supplying water to the city and its inhabitants, and all private sewers and their connections with the public sewer system.

(*i*) He shall supervise the laying of mains and connections for the purpose of supplying gas to the inhabitants of the city.

(*j*) He shall inspect and report upon the conditions of public property and public works whenever required by the City Mayor.

(*k*) He shall supervise and regulate the location and use of engines, boilers, forges, and other manufacturing and heating appliances in accordance with law and ordinance relating thereto. He is authorized to charge fees, at rates to be fixed by the City Council with the approval

of the Department Head, for the sanitation and transportation services and supplies furnished by his office.

(*l*) He shall inspect and supervise the construction, repair, removal, and safety of private buildings, and regulate and enforce the numbering of houses, in accordance with the ordinances of the city.

(*m*) With the previous approval of the City Mayor in each case, he shall order the removal of buildings and structures erected in violation of the ordinances; shall order the removal of the materials employed in the construction or repair of any building or structure made in violation of said ordinances; and shall cause buildings and structures dangerous to the public to be made secure or torn down.

(*n*) He shall file and preserve all maps, plans, notes, surveys, and other papers and documents pertaining to his office.

SEC. 16. *Execution of authorized public works and improvements.*—All repair or construction of any work or public improvement, except parks, boulevards, streets or alleys, involving an estimated cost of three thousand pesos or more shall be awarded by the Mayor upon the recommendation of the city engineer to the lowest responsible bidder after public advertisement by posting notices of the call for bids in conspicuous places in the city hall and other public places, which shall not be less than ten, and by publication in the *Official Gazette*, both for not less than ten days: *Provided, however,* That the city engineer may, with the approval of the President of the Philippines upon the recommendation of the Secretary of Public Works and Communications, execute by administration any such public work costing three thousand pesos or more.

In case of public works involving an expenditure of less than three thousand pesos, it shall be discretionary with the city engineer either to proceed with the work himself or to let the contract to the lowest bidder after such publication and notice as shall be deemed appropriate or as may be, by regulations, prescribed.

SEC. 17. *The City Treasurer-Assessor—His powers and duties.*—The city treasurer-assessor shall act as chief fiscal officer and financial adviser of the city and custodian of its funds. He shall have the following general powers and duties:

(*a*) He shall collect all taxes due the city, all licenses authorized by law or ordinance, all rents due for lands, markets, and other property owned by the city, all further charges of whatever nature fixed by law or ordinance, and shall receive and issue receipt for all costs, fees, fines and forfeitures imposed by the municipal court.

(*b*) He shall collect, as deputy of the Collector of Internal Revenue, by himself or deputies, all taxes and charges imposed by the Government of the Republic of the Philippines upon property or persons in the city depositing daily such collections in any depository bank of the Government.

(*c*) He shall perform in and for the city the duties imposed by the National Internal Revenue Code and such further duties imposed by law upon provincial treasurers as are not inconsistent with the provisions of this Act as well as the other duties imposed upon him by law.

(*d*) He shall purchase and issue all supplies, equipment or other property required by the city, through the Purchasing Agent, or otherwise, as may be authorized, subject to the general provisions of law relating thereto.

(*e*) He shall be accountable for all funds and property of the city and shall render such accounts in connection therewith as may be prescribed by the Auditor-General.

(*f*) He shall deposit daily all municipal funds and collections in any bank duly designated as Government depository.

(*g*) He shall disburse the funds of the city in accordance with duly authorized appropriations, upon properly executed vouchers bearing the approval of the chief of the city office concerned, and on or before the twentieth day of each month he shall furnish the Mayor and the City Council for their administrative information a statement of the appropriation, expenditures and balances of all funds and accounts as of the last day of the month preceding.

(*h*) He shall annually assess and value for taxation the real estate of the city in accordance with Act Numbered Four hundred seventy of the Commonwealth, known as the Assessment Law, as amended, and shall exercise and perform the powers and duties conferred by said law upon provincial assessors and municipal treasurers generally.

SEC. 18. *The City Fiscal—His powers and duties.*—The city fiscal shall be the chief legal adviser of the city. He shall have the following powers and duties:

(*a*) He shall represent the city in all civil cases wherein the city or any officer thereof, in his official capacity, is a party.

(*b*) He shall, when directed by the Mayor, institute and prosecute in the city's interest all suits on any bond, lease, or other contract and upon any breach or violation thereof.

(*c*) He shall, when requested, attend meetings of the City Council, draw ordinances, contracts, bonds, leases, and other instruments involving any interest of the city, and inspect and pass upon any such instrument already drawn.

(*d*) He shall give his opinion in writing, when requested by the City Mayor or the City Council or any of the heads of the city offices, upon any question relating to the city or the rights or duties of any city officer thereof.

(*e*) He shall, whenever it is brought to his knowledge that any person, firm, or corporation holding or exercising any franchise or public privilege from the city, has failed to comply with any condition, or to pay any consideration mentioned in the grant of such franchise or privilege, investigate or cause to be investigated the same and report to the City Mayor.

(*f*) He shall investigate all charges of crimes, misdemeanors, and violations of laws and city ordinances and prepare the necessary informations or make the necessary complaints against the persons accused. He may conduct such investigations by taking oral evidence of reputed witnesses and for this purpose may, by *subpoena* or *subpœna duces tecum*, summon witnesses to appear and testify under oath before him, or to produce documents and other evidence before him, and the attendance of, or the produc-

tion of documents and other evidence by, an absent or recalcitrant witness may be enforced by application to the municipal court or the Court of First Instance.

(*g*) He shall have charge of the prosecution of all crimes, misdemeanors and violations of laws and city ordinances triable in the Court of First Instance and the municipal court of the city, and shall discharge all the duties in respect to criminal prosecutions enjoined by law upon provincial fiscals.

(*h*) He shall cause to be investigated the causes of sudden deaths which have not been satisfactorily explained and when there is suspicion that the cause arose from unlawful acts or omissions of other persons or from foul play. For that purpose he may cause autopsies to be made in case it is deemed necessary and shall be entitled to demand and receive for the purpose of such investigations or autopsies the aid of the city health officer.

(*i*) He shall at all times render such professional services as the City Mayor or City Council may require, and shall have such powers and perform such duties as may be prescribed by law or ordinance.

SEC. 19. *The City Health Officer—His powers and duties.*—The city health officer shall have the following general powers and duties:

(*a*) He shall have general supervision over the health and sanitary conditions of the city, including the cleaning of crematories, cemeteries, stockyards, slaughterhouses, and markets.

(*b*) He shall execute and enforce all laws, ordinances and regulations relating to the public health.

(*c*) He shall recommend to the City Council the passage of such ordinances as he may deem necessary for the preservation of the public health.

(*d*) He shall cause to be prosecuted all violations of sanitary laws, ordinances, or regulations.

(*e*) He shall make sanitary inspections and may be aided therein by such members of the police force of the city or the national police as shall be designated as sanitary police by the chief of police or proper national police officer and such sanitary inspectors as may be authorized by law.

(*f*) He shall keep a civil register for the city and shall record therein all births, marriages, and deaths with their respective dates.

(*g*) He shall perform such other duties, not repugnant to law or ordinance, with reference to the health and sanitation of the city as the Director of Health shall direct.

SEC. 20. *The Chief of Police—His powers and duties.*—The chief of police shall have charge of the police and fire force of the city. He shall have the following powers and duties:

(*a*) He may issue supplementary regulations not incompatible with law or general regulations promulgated by the proper department head of the National Government, in accordance with law, for the governance of the city police, detective force and the fire force.

(*b*) He shall quell riots, disorders, disturbances of the peace, and shall arrest and prosecute violators of any law or ordinance; shall exercise police supervision over

all land and water within the police jurisdiction of the city; shall be charged with the protection of the rights of persons and property wherever found within the jurisdiction of the city, and shall arrest when necessary to prevent the escape of the offender, violators of any law or ordinance, and all who obstruct or interfere with him in the discharge of his duty; shall have charge of the city prison; and shall be responsible for the safekeeping of all prisoners until they shall be released from custody, in accordance with law, or delivered to the warden of the proper prison or penitentiary.

(*c*) He may take good and sufficient bail for the appearance before the judge of the municipal court of any person arrested for violation of any city ordinance.

(*d*) He shall have authority within the police limits of the city, to serve and execute criminal processes of any court.

(*e*) He shall be the deputy sheriff of the city, and as such he shall, personally or by representative, attend the sessions of the municipal court, and shall execute promptly and faithfully, all writs and processes of said court.

(*f*) He shall have charge of the fire-engine houses, fire engines, hose trucks, hooks and ladders, and all other fire apparatus.

(*g*) He shall have full police powers in the vicinity of fires.

(*h*) He shall have authority to remove or demolish any building or other property whenever it shall become necessary to prevent the spreading of fire or to protect adjacent property.

(*i*) He shall investigate and report to the Mayor upon the origin and cause of all fires occurring within the city.

(*j*) He shall inspect all buildings erected or under construction or repair within the city and determine whether they provide sufficient protection against fire and comply with the ordinances relating thereto.

(*k*) He shall have charge of the city fire alarm service.

(*l*) He shall supervise and regulate the stringing, grounding, and installation of wires for all electrical connections with a view to avoiding conflagrations, interference with public traffic or safety, or the necessary operation of the police and fire force.

(*m*) He shall supervise the manufacture, storage, and use of petroleum, gas, acetylene, gunpowder, and other highly combustible matter and explosives.

(*n*) He shall have such other powers and perform such other duties as may be prescribed by law or ordinance.

SEC. 21. *Peace officers—Their powers and duties.*—The City Mayor, the chief of police, and all officers and members of the city police and detective force shall be peace officers. Such peace officers are authorized to serve and execute all processes of the municipal court and criminal processes of all other courts to whomsoever directed, within the jurisdictional limits of the city or within the police limits as hereinbefore defined; within the same territory, to pursue and arrest, without warrant, any person found in suspicious places or under suspicious circumstances reasonably tending to show that such person has committed, or is about to commit, any crime, or breach of the peace; to arrest or cause to be arrested, without warrant, any

offender when offense is committed in the presence of a peace officer or within his view; in such pursuit or arrest to enter any building, ship, boat, or vessel or take into custody any person therein suspected of having participated in such crime or breach of the peace, and any property suspected of having been stolen and to exercise such other powers and perform such other duties as may be prescribed by law or ordinance. Whenever the Mayor shall deem it necessary to avert danger or to protect life and property, in case of riot, disturbance, or public calamity, or when he has reason to fear any serious violation of law and order, he shall have power to swear in special police, in such numbers as the occasion may demand. Such special police shall have the same powers while on duty as members of the regular force.

SEC. 22. *Regular, auxiliary and acting judges of municipal court.*—There shall be a municipal court for the city for which there shall be appointed a municipal judge and an auxiliary municipal judge.

The municipal judge may, upon proper application, be allowed a vacation of not more than thirty days every year with salary. The auxiliary municipal judge shall discharge the duties of the municipal judge in case of absence, incapacity, or inability of the latter until he resumes his post, or until a new judge shall have been appointed. During his incumbency the auxiliary municipal judge shall enjoy the powers, emoluments and privileges of the municipal judge who shall not receive any remuneration therefor except the salary to which he is entitled by reason of his vacation provided for in this Charter.

In case of absence, incapacity or inability, of both the municipal judge and the auxiliary municipal judge, the Secretary of Justice shall designate the justice of the peace of any of the adjoining municipalities to preside over the municipal court, and he shall hold the office temporarily until the regular incumbent or the auxiliary judge thereof shall have resumed office, or until another judge shall have been appointed in accordance with the provisions of this Charter. The justice of the peace so designated shall receive his salary as justice of the peace plus seventy per cent of the salary of the municipal judge whose office he has temporarily assumed.

SEC. 23. *Clerk and employees of the municipal court.*—There shall be a clerk of the municipal court who shall be appointed by the Municipal Judge in accordance with the Civil Service Law, rules and regulations, and who shall receive a compensation, to be fixed by ordinance approved by the Secretary of Justice, at not exceeding one thousand four hundred and forty pesos *per annum*. He shall keep the seal of the court and affix it to all orders, judgments, certificates, records, and other documents issued by the court. He shall keep a docket of the trials in the court, in which he shall record in a summary manner the names of the parties and the various proceedings in civil cases, and in criminal cases, the name of the defendant, the charge against him, the names of the witnesses, the date of the arrest, the appearance of defendant, together with the fines and costs adjudged or collected in accordance with the judgment. He shall have the power to administer oath.

The clerk of the municipal court shall at the same time be sheriff of the city and shall as such have the same powers and duties conferred by existing law upon sheriffs. The City Council may provide for such number of clerks in the office of the clerk of the municipal court as the needs of the service may demand.

SEC. 24. *Jurisdiction of Municipal Court.*—The municipal court shall have like jurisdiction in civil and criminal cases and the same incidental powers as are conferred by law upon municipal courts of chartered cities.

SEC. 25. *Procedure in municipal court in prosecutions for violation of laws and ordinances.*—In a prosecution for the violation of any ordinance, the first process shall be a summons; except that a warrant for the arrest of the offender may be issued in the first instance upon the affidavit of any person that such ordinance has been violated, and that the person making the complaint has reasonable grounds to believe that the party charged is guilty thereof, which warrant shall conclude: "Against the ordinance of the city in such cases made and provided." All proceedings and prosecutions for offenses against the laws of the Philippines shall conform to the rules relating to process, pleading, practice, and procedure for the judiciary of the Philippines, and such rules shall govern the municipal court and its officers in all cases insofar as the same may be applicable.

SEC. 26. *Costs, fees, fines and forfeitures in municipal court.*—There shall be taxed against and collected from the defendant, in case of his conviction in the municipal court, such costs and fees as may be prescribed by law in criminal cases in justice of the peace courts. All costs, fees, fines, and forfeitures shall be collected by the clerk of court, who shall keep a docket of those imposed and of those collected, and shall pay collections of the same to the city treasurer, for the benefit of the city, on the next business day after the same are collected, and take receipts therefor. The municipal judge shall examine said docket each day, compare the same with the amount receipted for by the city treasurer and satisfy himself that all such costs, fees, fines, and forfeitures have been duly accounted for.

SEC. 27. *No person sentenced by municipal court to be confined without commitment.*—No person shall be confined in the prison by sentence of the municipal court until the warden or officer in charge of the prison shall receive a written commitment showing the offense for which the prisoner was tried, the date of the trial, the exact terms of the judgment or sentence, and the date of the order of the commitment. The clerk shall, under seal of the court, issue such a commitment in each case of sentence to imprisonment.

SEC. 28. *Procedure on appeal from municipal court to Court of First Instance.*—An appeal shall lie to the Court of First Instance in all cases where fine or imprisonment or both, is imposed by the municipal court. The party desiring to appeal shall, before six o'clock post meridian of the fifteenth day after the promulgation and entry of the judgment by the municipal court, file with the clerk of the court a written statement that he appeals to the court of First Instance. The filing of such statement shall

perfect the appeal. The judge of the court from whose decision appeal is taken, shall, within five days after the appeal is taken, transmit to the clerk of the Court of First Instance a certified copy of the record of proceedings and all the original papers and processes in the case. A perfected appeal shall operate to vacate the judgment of the municipal court, and the action, when duly entered in the Court of First Instance, shall stand for trial *de novo* upon its merits as though the same had never been tried. Pending an appeal, the defendant shall remain in custody unless sufficient bail, in accordance with existing provisions of law, has been filed and perfected.

Appeals in civil cases shall be governed by the ordinary procedure established by law.

ASSESSMENT

SEC. 29. The provisions of Commonwealth Act Numbered Four hundred and seventy, known as the Assessment Law, as amended and other laws relative to real property tax applicable to the municipalities, shall continue in force in, or be applicable to, the City of Trece Martires as before its incorporation. For this purpose, whenever the words "municipal council", "municipality", "municipalities", or "municipal" appear in said Act, the same shall be construed to mean as City Council, or City of Trece Martires.

SEC. 30. *Allotment of internal revenue and other taxes.*—Of the internal revenue accruing to the National Treasury under Chapter II, Title XII, Commonwealth Act Numbered Four hundred and sixty-six, and other taxes collected by the National Government and allotted to the various provinces, as well as the National aid for schools, the City of Trece Martires shall receive a share equal to what it would receive if it were a regularly organized province.

CITY BUDGET

SEC. 31. *Annual budget.*—At least four months before the beginning of each fiscal year the city treasurer-assessor shall present to the City Mayor a certified detailed statement by department of all receipts and expenditures of the city pertaining to the preceding fiscal year, and to the first seven months of the current fiscal year together with an estimate of the receipts and expenditures for the remainder of the current fiscal year; and he shall submit with this statement a detailed estimate of the revenues and receipts of the city from all sources for the ensuing fiscal year. Upon receipt of this statement and estimate and the statements of heads of city offices as required by section twelve of this Charter, the City Mayor shall formulate and submit to the City Council at least two and a half months before the beginning of the ensuing fiscal year, a detailed budget covering the estimated necessary expenditures for the said ensuing fiscal year, which shall be the basis of the annual appropriation ordinance: *Provided, however,* That in no case shall the aggregate amount of such appropriation exceed the estimate of revenues and receipts submitted by the city treasurer-assessor as provided above: *Provided, further,* That not more than fifty per cent of the expected revenue of the

city for any fiscal year shall be appropriated for the payment of salaries and wages of officials and employees of the city government for the said fiscal year.

SEC. 32. *Supplemental budget.*—Supplemental budget formulated in the same manner may be adopted when special or unforeseen circumstances make such action necessary.

SEC. 33. *Failure to enact an appropriation ordinance.*—Whenever the City Council fails to enact an appropriation ordinance for any fiscal year before the end of the previous fiscal year the appropriation ordinance for such previous year shall be deemed reenacted, and shall go into effect on the first day of the new fiscal year as the appropriation ordinance for that year, and such appropriation ordinance shall be deemed reenacted from year to year, and shall be renewed and go into effect on the first day of each fiscal year, as the appropriation ordinance for that year, until a new appropriation ordinance is duly enacted.

BUREAUS PERFORMING MUNICIPAL DUTIES

SEC. 34. *General Auditing Office—City Auditor.*—The city auditor, under the supervision of the Auditor General, shall receive and audit all accounts of the city, in accordance with the provisions of law relating to government accounts and accounting. The provincial auditor of the Province of Cavite shall act as city auditor *ex officio* of the City of Trece Martires with an additional compensation of four hundred eighty pesos *per annum*, payable from the funds of the city.

SEC. 35. *The Register of Deeds of the Province of Cavite as city register of deeds of the City of Trece Martires.*—The register of deeds of the Province of Cavite shall act as city register of deeds *ex officio* of the City of Trece Martires with an additional compensation of four hundred eighty pesos *per annum*, payable from the funds of the city.

SEC. 36. *The Bureau of Supply.*—The Purchasing Agent shall purchase and supply in accordance with law all supplies, equipment, material, and property of every kind, except real estate for the use of the city and its offices. But contracts for completed work of any kind for the use of the city, or any of its departments or offices, involving both labor and materials, where the materials are furnished by the contractors, shall not be deemed to be within the purview of this section.

SEC. 37. *The Bureau of Public Schools.*—The Director of the Bureau of Public Schools shall exercise the same jurisdiction and powers in the city as elsewhere in the Philippines and the division superintendent of schools for the Province of Cavite shall have all the powers and duties in respect to the schools of the city as are vested in division superintendents in respect to schools of their divisions.

The city council shall have the same powers in respect to the establishment of schools as are conferred by law on municipal councils.

SEC. 38. *Reports to the Mayor concerning schools—Construction and custody of school buildings.*—The division superintendent of schools shall make a quarterly report of the condition of the schools and school buildings of the City of Trece Martires to the City Mayor, and such recommendations as seem to him wise in respect to the number of

teachers, their salaries, new buildings to be erected and all other similar matters, together with the amount of city revenues which should be expended in paying teachers, and improving the schools or school buildings of the city.

MISCELLANEOUS AND FINAL PROVISIONS

SEC. 39. *Capital and seat of government of Province of Cavite.*—The City of Trece Martires shall be the capital and seat of government of the Province of Cavite.

SEC. 40. *Representative district.*—For election purposes, the City of Trece Martires shall continue to be part of the province and representative district of Cavite. The qualified voters of the said city shall be qualified to vote in the election of elective officials of the said province.

SEC. 41. *Appropriation.*—There is hereby appropriated out of any funds in the National Treasury not otherwise appropriated, the sum of five hundred thousand pesos which shall be expended by the Provincial Board of Cavite for the survey and delimitation of the lands to be comprised within the territory of the City of Trece Martires, for the purchase or expropriation of private lands within the said territory, for the construction of the necessary buildings for housing the government offices and for the payment of necessary expenses to be incurred in connection with the operation for the first year of the government of said city.

SEC. 42. *Date of taking effect.*—The provisions of this Act, which refer to the survey and delimitation of the territory of the City of Trece Martires, to the purchase or expropriation of the lands comprised in the said territory, to the appropriation for the said purposes, and to the construction of the necessary buildings for housing the offices of the government of the city, shall take effect upon the approval of this Act; all the other provisions of said Act shall take effect on the date of the inauguration of the city which shall be fixed by the President of the Philippines.

Approved, May 24, 1954.

H. No. 413.

[REPUBLIC ACT NO. 982]

AN ACT AMENDING AND REPEALING CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED FIVE HUNDRED AND THIRTEEN.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Sections one, three, five, eight, twelve, thirteen, fourteen, fifteen and sixteen of Republic Act Numbered Five hundred and thirteen, entitled "An Act granting Loreto F. de Hemedes a temporary permit to establish radio stations for broadcasting," are amended as follows:

"SEC. 1. There is hereby granted to Loreto F. de Hemedes, hereinafter referred to as the 'grantee', a franchise for a period of twenty-five years from the approval of this act to construct, maintain and operate in the Philippines, at such places as the said grantee may select, subject to approval of the Secretary of Public Works and

Communications, stations for radio and television broadcasting together with their corresponding microwavelink relay station: *Provided,* That the holder of the franchise herein granted shall start the operation of at least one radio broadcasting station or one television station within one and a half years from the approval of said franchise. Failure to comply with this requirement shall *ipso facto* cancel and void the franchise.

"SEC. 3. The provisions of Act Numbered Thirty-eight hundred and forty-six, entitled 'An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes'; Act Numbered Thirty-nine hundred and ninety-seven, known as the Radio Broadcasting Law; Commonwealth Act Numbered One hundred and forty-six, known as the Public Service Act, and their amendments, as well as the regulations issued thereunder, shall govern the construction, maintenance and operation of the stations referred to in section one.

"SEC. 5. A special right is reserved to the Government of the Republic of the Philippines, in time of war, insurrection, or domestic trouble, to take over and operate the said stations upon the order and direction of the President of the Philippines, upon payment of just compensation to the grantee, for the use of the said stations during the period when they shall be so operated by the Philippine Government.

"SEC. 8. (*a*) The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property, exclusive of the franchise as other persons or corporations are now or hereafter may be required by law to pay.

"(*b*) The grantee shall further be liable to pay all other tax imposable by the National Internal Revenue Code by reason of this franchise.

"SEC. 12. The franchise hereby granted shall be subject to amendment, alteration, or repeal by the Congress of the Philippines, and the right to use and occupy public property and places hereby granted shall revert to the respective governments, upon the termination of this franchise, by such repeal or by forfeiture, or expiration in due course.

"SEC. 13. As a condition of the granting of this franchise the grantee shall execute a bond in favor of the Government of the Philippines, in the sum of twenty thousand pesos, in a form and with sureties satisfactory to the Secretary of Public Works and Communications conditioned upon the faithful performance of the grantee's obligations hereunder during the first three years of the life of this franchise. If, after three years from the date of acceptance of this franchise, the grantee shall have fulfilled said obligations or soon thereafter as the grantee shall have fulfilled the same, the bond aforesaid shall be cancelled by the Secretary of Public Works and Communications.

"SEC. 14. Acceptance of this franchise shall be given in writing within six months after the approval of this Act. When so accepted by the grantee and upon the approval of the bond aforesaid by the Secretary of Public Works and Communications the grantee shall be empowered to exercise the privileges granted thereby.

"SEC. 15. The grantee is hereby authorized to organize a corporation the majority stock of which shall be owned by the grantee to which he is empowered to sell or assign this franchise, but thereafter the said corporation shall not lease, transfer, grant the usufruct of, sell or assign this franchise nor the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other company or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. Any corporation to which this franchise may be sold, transferred, or assigned, shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person, firm, company, corporation or other commercial or legal entity to which this franchise is sold, transferred, or assigned shall be subject to all the conditions, terms, restrictions and limitations of this franchise, as fully and completely and to the same extent as if the franchise has been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

"SEC. 16. This franchise shall not be interpreted to mean an exclusive grant of the privileges herein provided for."

SEC. 2. Section two of the same Act is hereby repealed.

SEC. 3. A new section is hereby inserted between sections sixteen and seventeen of the same Act, to be known as Section 16–A, which shall read as follows:

"SEC. 16–A. In the event any individual, partnership or corporation receive from the Congress a similar franchise in which there shall be term or terms more favorable than those herein granted or tending to place the herein grantee at a disadvantage, such term or terms shall, *ipso facto*, become a part of this franchise and shall operate equally in favor of the grantee as in the case of said individual, partnership or corporation."

SEC. 4. The Title of the same Act is hereby amended to read as follows:

"An Act granting Loreto F. de Hemedes, a franchise to construct, maintain and operate stations for television and radio broadcasting in the Philippines."

SEC. 5. This Act shall take effect upon its approval.

Approved, May 26, 1954.

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Department of Finance

BUREAU OF INTERNAL REVENUE

REVENUE REGULATIONS NO. V-37

February 13, 1954

AMENDMENT TO SECTION 9 OF REVENUE REGULATIONS NO. V-7

To all Internal Revenue Officers and others concerned:

Pursuant to the provisions of section 338, in relation to section 4 of Commonwealth Act No. 466, otherwise known as the National Internal Revenue Code, the following regulations amending section 9 of Revenue Regulations No. V-7 are hereby promulgated and shall be known as Revenue Regulations No. V-37.

SECTION 1. Section 9 of Revenue Regulations No. V-7 of the Department of Finance, as last amended by Revenue Regulations No. V-22, is hereby amended to read as follows:

SEC. 9. *Stock-taking and allowance for waste of cigarette paper.*—The Supervisor of Tobacco Factories and all Provincial Revenue Agents, except those for the Provinces of Rizal, Cavite and Bulacan, shall take physical inventory of the stock of cigarette paper of all importers, exporters and manufacturers thereof and manufacturers of cigarettes within their respective units, once every three months or as often as may be found necessary. The stock-taking report shall show a summary of all debt and credit transactions in cigarette paper and any shortage or overage found in the inventories of stock, together with the necessary recommendations.

Registered manufacturers of cigarettes may be credited with allowance for wastage of cigarette paper destroyed in the process of manufacture of cigarettes not to exceed two per cent of the cigarette paper used in such manufacture by Modern Standard German, Standard American and Standard Japanese cigarette making machines, and four per cent in the case of cigarette making machines other than those machines aforementioned. All waste cigarette paper should be preserved, and before the same is destroyed, the manufacturers of cigarettes shall make proper application therefor with the Collector of Internal Revenue or with the Provincial Revenue Agent, as the case may be. The Collector of Internal Revenue or his representative shall authorize and witness by himself or his representative such destruction. A certificate of destruction in triplicate shall be signed by the manufacturer or his authorized representative and the internal revenue officer who witnessed the destruction. The credit for allowance shall only be entered in the register book after the accomplishment of the certificate of destruction, a copy of which shall constitute the supporting paper for such entry.

It shall be the duty of the permittee or user to keep his stock of cigarette paper in his factory, warehouse, or place of business in an enclosure, room, or closet under special lock subject to inspection at all times by internal revenue officers. The cigarette paper shall be arranged separately and marked or tagged in accordance with their classification as to brand, color and length in such manner as to facilitate an accurate physical inventory thereof by internal revenue officers.

SEC. 2. *Date of Effectivity.*—These regulations shall take effect upon promulgation in the *Official Gazette*.

JAIME HERNANDEZ
Secretary of Finance

Recommended by:

J. ANTONIO ARANETA
Acting Collector of Internal Revenue

Department of Justice

ADMINISTRATIVE ORDER NO. 60

April 19, 1954

APPOINTING FIRST ASSISTANT PROVINCIAL FISCAL EMILIO CECILIO OF NUEVA ECIJA AS ACTING PROVINCIAL FISCAL OF SAID PROVINCE.

In the interest of the public service and pursuant to the provisions of section 1679 of the Revised Administrative Code, Mr. Emilio Cecilio First Assistant Provincial Fiscal of Nueva Ecija, is hereby appointed Acting Provincial Fiscal of said province, effective February 8, 1954, with compensation provided by law for the position, and to continue until further orders.

This amends Administrative Order No. 17, dated February 8, 1954.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 62

April 12, 1954

AUTHORIZING JUDGE ANATOLIO MAÑALAC OF THE TENTH JUDICIAL DISTRICT, SORSOGON, TO DECIDE CERTAIN CASES IN MANILA.

In the interest of the administration of justice and pursuant to the request of Judge Anatolio Mañalac of the Tenth Judicial District, Sorsogon, he is hereby authorized to decide in Manila the following cases which were previously tried by him while presiding over the Court of First Instance of said province:

Administrative Case No. 15—"Rosita H. Hipolito *vs.* Justice of the Peace of Casiguran, Sorsogon";

Administrative Case No. 16—"Bonifacio Hebueno *vs.* Justice of the Peace of Castilla, Sorsogon";

Criminal Case No. 1192—"P. P. *vs.* Silvestre Domalaon" for violation of Republic Act No. 145;

Criminal Case No. 1193—"P. P. *vs.* Silvestre Domalaon" for violation of Republic Act No. 145;

Criminal Case No. 1196—"P. P. *vs.* Silvestre Domalaon" for violation of Republic Act No. 145;

Crminal Case No. 1289—"P. P. *vs.* Miguel de la Cruz, et als." for murder;

Criminal Case No. 1300—"P. P. *vs.* James Thompson, et als.," for murder; and

Special Case No. 445—"Testate Estate of Balbino Gallanosa."

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 63

April 26, 1954

DESIGNATING SOLICITOR JUAN T. ALANO IN THE OFFICE OF THE SOLICITOR GENERAL AS ACTING JUDGE OF THE MUNICIPAL COURT OF MANILA.

In the interest of the public service and pursuant to the provisions of section 39, of Republic Act No. 409, Mr. Juan T. Alano, Solicitor in the Office of the Solicitor General, is hereby designated Acting Judge of the Municipal Court of Manila during the absence on leave of Judge Andres Sta. Maria from May 3 to 31, 1954, inclusive.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 64

April 26, 1954

AUTHORIZING JUDGE SEGUNDO MARTINEZ, THIRD JUDICIAL DISTRICT, BRANCH IV, PANGASINAN AND ZAMBALES TO HOLD COURT IN OLONGAPO, ZAMBALES.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Segundo Martinez, Judge of the Third Judicial District, Branch IV, Pangasinan and Zambales, is hereby authorized to hold court in Olongapo, Zambales, from May 3, 1954 to June 15, 1954, for the purpose of trying all kinds of cases and to enter judgments therein.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 65

April 1, 1954

AUTHORIZING JUDGE-AT-LARGE JOSE N. LEUTERIO TO HOLD COURT IN ZAMBOANGA CITY TO TRY ALL KINDS OF CASES AND TO ENTER JUDGMENTS THEREIN.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Jose N. Leuterio, Judge-at-Large, is hereby authorized to hold court in Zamboanga City, as soon as possible, for the purpose of trying all kinds of cases and to enter judgments therein.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 66

April 29, 1954

DESIGNATING ACTING DIRECTOR JOSE G. LUKBAN OF THE NATIONAL BUREAU OF INVESTIGATION AS SPECIAL COUNSEL TO ASSIST THE CITY FISCAL OF MANILA.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, Major Jose G. Lukban, Acting Director of the National Bureau of Investigation, is hereby designated Special Counsel to assist the City Fiscal of Manila in the investigation and prosecution of Criminal Cases Nos. 24746 to 24755 and 24824 to 24833, entitled "People *vs.* Pedro de la Peña, Osmundo Ramos, et al.," of the Court of First Instance of Manila, in addition to his

regular duties, without additional compensation effective immediately and to continue until further orders.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 67

April 30, 1954

AUTHORIZING ASSISTANT DIRECTOR ERIBERTO B. MISA, BUREAU OF PRISONS TO SIGN VOUCHERS AND CHECK PORTIONS OF ALL TREASURY WARRANTS.

Pursuant to the provisions of sections 615 and 616 of the Revised Administrative Code, Mr. Eriberto B. Misa, Assistant Director, Bureau of Prisons, is hereby authorized to sign vouchers and check portions of all treasury warrants drawn against the appropriations of the Bureau of Prisons, signing as follows:

ALFREDO M. BUNYE
Director of Prisons

By: ERIBERTO B. MISA
Assistant Director

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 68

May 3, 1954

AUTHORIZING JUDICIAL OFFICER LEON G. JAYME AND ASSISTANT MAXIMINO CARREON OF THE DIVISION OF COURTS, FINANCE AND STATISTICS, DEPARTMENT OFJUSTICE TO SIGN VOUCHERS, TRANSPORTATION ORDERS, ETC., THE LATTER IN THE ABSENCE OF THE FORMER.

Pursuant to the provisions of sections 615 and 616 of the Revised Administrative Code, Mr. Leon G. Jayme, Judicial Officer, Division of Courts, Finance and Statistics, Department of Justice, is hereby authorized to sign vouchers, transportation orders and check portions of all treasury warrants drawn against the appropriation of this Department, signing as follows:

For the Secretary of Justice:

LEON G. JAYME
Judicial Officer

In the absence of Mr. Leon G. Jayme, Mr. Maximino Carreon, Assistant, same Division is likewise authorized to sign vouchers, transportation orders and check portions of all treasury warrants drawn against the appropriation of this Department signing as follows:

For the Secretary of Justice:

M. CARREON
Assistant
Courts Finance and Statistics Division

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 69

May 3, 1954

AUTHORIZING JUDGE-AT-LARGE JOSE N. LEUTERIO TO HOLD COURT IN BASILAN CITY AND IN JOLO, SULU.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Jose N. Leuterio, Judge-at-Large, is hereby authorized to hold court in Basilan City and in Jolo, Sulu, after his court sessions in Zamboanga City, for the purpose of trying all kinds of cases and to enter judgments therein.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 70

April 30, 1954

DESIGNATING PROVINCIAL FISCAL WENCESLAO ORTEGA OF ZAMBALES TO ASSIST THE PROVINCIAL FISCAL OF NUEVA ECIJA AND THE CITY ATTORNEY OF CABANATUAN CITY.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, Mr. Wenceslao Ortega, Provincial Fiscal of Zambales, is hereby designated to assist the Provincial Fiscal of Nueva Ecija and the City Attorney of Cabanatuan City in the investigation and prosecution of murder and kidnapping cases that may hereafter be filed in their respective Offices, effective immediately and to continue until further orders.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 71

May 3, 1954

DESIGNATING PROVINCIAL FISCAL FELICIANO BELMONTE OF MOUNTAIN PROVINCE AS ACTING JUDGE OF THE MUNICIPAL COURT OF BAGUIO CITY.

In the interest of the public service and pursuant to the provisions of section 2562 of the Revised Administrative Code, Mr. Feliciano Belmonte, Provincial Fiscal of Mountain Province, is hereby designated Acting Judge of the Municipal Court of Baguio City during the absence on leave of Judge Generoso Buendia.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 72

April 30, 1954

DESIGNATING JUSTICE OF THE PEACE JERONIMO CALINOG OF CAMMALIGAN AND GAINZA, CAMARINES SUR AS ACTING MUNICIPAL JUDGE OF NAGA CITY.

In the interest of the administration of justice and pursuant to the provisions of section 75 of Republic Act 305, otherwise known as the Charter of the City of Naga, Mr. Jeronimo Calinog, Justice of the Peace of Cammaligan and Gainza, Camarines Sur, is hereby designated Acting Municipal Judge of Naga City during the leave of absence of the regular incumbent, from April 26, to May 10, 1954.

JESUS G. BARRERA
Undersecretary of Justice

ADMINISTRATIVE ORDER NO. 73

May 5, 1954

DESIGNATING SENIOR CLERK EULOGIO S. EUSEBIO, OFFICE OF THE REGISTER OF DEEDS, PROVINCE OF RIZAL AS REGISTER OF DEEDS OF SAID PROVINCE.

In the interest of the public service, and pursuant to the provisions of section 201 of the Administrative Code, as amended by Republic Act No. 164, Mr. Eulogio S. Eusebio, senior clerk in the office of the Register of Deeds for the Province of Rizal, is hereby designated to act as Register of Deeds for said province beginning May 5 to 15, 1954, or until further orders.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 74

May 8, 1954

AUTHORIZING JUDGE FIDEL IBAÑEZ OF MANILA, TO DECIDE PENDING CASES AND PROMULGATE DECISIONS AND ORDERS THEREIN.

In the interest of the administration of justice and pursuant to the request of Judge Fidel Ibañez of the Sixth Judicial District, Manila, Branch II, the authority for him to decide pending cases and promulgate decisions and orders during his leave, April and May, 1954, is hereby confirmed.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 75

May 12, 1954

DESIGNATING JUSTICE OF THE PEACE CELSO BERNALES OF PANAY, CAPIZ AS ACTING MUNICIPAL JUDGE OF ROXAS CITY.

In the interest of the administration of justice and pursuant to the provisions of section 75 of Republic Act No. 603, otherwise known as the Charter of the City of Roxas, Mr. Celso Bernales, Justice of the Peace of Panay, Capiz, is hereby designated Acting Municipal Judge of Roxas City effective May 18, 1954, and to continue only until the return to office of the regular incumbent.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 76

May 12, 1954

DESIGNATING ATTORNEY MARTINIANO P. VIVO, OFFICE OF THE GOVERNMENT CORPORATE COUNSEL TO ASSIST THE PROVINCIAL FISCAL OF CAGAYAN.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, Mr. Martiniano P. Vivo, attorney, Office of the Government Corporate Counsel, is hereby designated Special Counsel to assist the Provincial Fiscal of Cagayan in the investigation and prosecution of cases involving officials and employees of the People's Homesite and Housing Corporation in said province, without additional compensation, effective immediately and to continue until further orders.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 77

May 14, 1954

AUTHORIZING CADASTRAL JUDGE MACAPANTAN ABBAS TO HOLD COURT IN THE PROVINCE OF COTABATO.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Macapantan

Abbas, Cadastral Judge, is hereby authorized to hold court in the Province of Cotabato, as soon as possible, for the purpose of trying all kinds of cases and to enter judgments therein.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 78

May 10, 1954

AUTHORIZING JUDGE ANGEL H. MOJICA OF ALBAY AND CATANDUANES, TO DECIDE IN MANILA CASES WHICH WERE PREVIOUSLY TRIED BY HIM.

In the interest of the administration of justice and pursuant to the request of Judge Angel H. Mojica of the Tenth Judicial District, Albay and Catanduanes, Second Branch, he is hereby authorized to decide in Manila during his vacation from May 3 to 31, 1954, the following cases which were previously tried by him while presiding over the Court of First Instance of Albay:

Criminal Case No 1121—People *vs.* Pedro Parañal for Serious Physical Injuries thru Reckless Imprudence;

Civil Case No. 639—Dy Tong *vs.* Felix Maroniña *et al.;* and

Criminal Case No. 1055—People *vs.* Portem *et al.* for Homicide with Serious Physical Injuries thru Reckless Imprudence.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 79

May 15, 1954

DESIGNATING JUSTICE OF THE PEACE RICARDO DIOSO OF PAGADIAN, ZAMBOANGA DEL SUR AS EX-OFFICIO CLERK OF COURT OF SAID PROVINCE.

In the interest of the public service and pursuant to section 68 of Republic Act 296, Justice of the Peace Ricardo Dioso of Pagadian, Zamboanga del Sur, is hereby designated Ex-Officio Clerk of Court of said province effective immediately, such designation to continue until further advice from this Department.

This designation is in addition to his regular duties as Justice of the Peace of Pagadian.

PEDRO TUASON
Secretary of Justice

ADMINISTRATIVE ORDER NO. 80

May 14, 1954

AUTHORIZING JUDGE-AT-LARGE JOSE P. FLORES TO HOLD COURT IN THE PROVINCE OF LA UNION TO TRY ALL KINDS OF CASES AND TO ENTER JUDGMENTS THEREIN.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Jose P. Flores, Judge-at-Large, is hereby authorized to hold court in the Province of La Union, as soon as possible, for the purpose of trying all kinds of cases and to enter judgments therein.

PEDRO TUASON
Secretary of Justice

Department of Agriculture and Natural Resources

BUREAU OF LANDS

LANDS ADMINISTRATIVE ORDER NO. 3-7

REGULATIONS AMENDING SECTIONS 45 AND 47 OF LANDS ADMINISTRATIVE ORDER NO. 3-4, AS AMENDED BY LANDS ADMINISTRATIVE ORDER NO. 3-6.

1. Section forty-five of Land Administrative Order No. 3-4, as amended, is hereby further amended to read as follows:

"45" *Annual Assessment.*—For the purpose of securing adequate funds for the maintenance, construction and repairs of irrigation systems within the friar lands, estates, *all lands irrigated from the systems of the Bureau of Lands are hereby charged with the payment of irrigation fees, and the owners or holders thereof,* shall pay said charges annually at the following rates:

(1) Lands planted to rice, corn, sugar cane, mongo and other seed plants—

	per hectare
(*a*) First Class irrigation systems	₱12.00
(*b*) Second class irrigation systems	10.80
(*c*) Third class irrigation systems	9.00
(2) Grass lands (Zacatal)—	
(*a*) First class irrigation systems	₱18.00
(*b*) Second class irrigation systems	15.00
(*c*) Third class irrigation systems	12.00

2. Section forty-seven of Lands Administrative Order No. 3-4 dated January 1, 1936, as amended, is hereby further amended to read as follows:

"47" *Water Power.*—Permits to use water for the operation of mills may be granted only when, in the opinion of the Director of Lands, such use will not interfere with the regular flow and supply of water in the main canals, laterals and sublaterals of the systems to the prejudice of the irrigators. The following annual rental shall be charged for the operation of mills.

For the operation of sugar or rice mills and other mills—₱200.

3. Section 3. This Administrative Order shall take effect as of January 1, 1950.

PLACIDO L. MAPA
Secretary of Agriculture and Natural Resources

Department of Health

BUREAU OF HEALTH

ADMINISTRATIVE ORDER No. 10

May 5, 1953

RULES AND REGULATIONS GOVERNING THE EXAMINATION FOR ADMISSION TO THE PRACTICE OF MASSAGE, AND THE OPERATION TO MASSAGE CLINICS, OFFICES, OR ESTABLISHMENTS, IN THE PHILIPPINES.

1. *Membership.*—The Committee of Examiners for Massagists, hereinafter referred to as the "Committee", shall be composed of 1 chairman, who shall be a ranking health officer of the Bureau of Health; 2 members, who shall be practicing massagists in good standing; and 1 member-secetary, who shall be a health officer of the Bureau of Health, all of whom to be designated by the Director of Health. The Chairman and members of the Committee shall hold office for 3 years; *Provided, however,* that the Director of Health may re-appoint anyone of them for another period of three years.

2. *Power and duties.*—The Committee shall have the following powers and duties:

(*a*) Announce and hold examination for massagist and perform all the duties pertinent thereto;

(*b*) Issue Certificate of Massagist and/or renew the same, after satisfying itself that the person applying for such certificate possesses all prescribed requirements;

(*c*) Inspect, from time to time, massage clinics, offices, or establishments, whether in Manila or in the provinces, in order to verify their compliance with the laws, rules and regulations, and to submit to the Director of Health its findings and recommendations after every inspection;

(*d*) Recommend to the Director of Health the cancellation, permanent or temporary, of any certificate the possessor of which has been found violating the existing laws, rules and regulations as the case may be;

(*e*) Recommend to the Director of Health the closure, permanent or temporary, of any massage clinic, office or establishment, which does not comply with the laws, rules and regulations in force, and/or refer same of the local law enforcement agency if the violation found so warrants;

(*f*) Prescribe rules and regulations, not inconsistent with the provisions of this Administrative Order, and/or recommend to the Director of Health such changes as time and experience may show to be necessary; and

(*g*) Conduct investigations of all complaints against registered massagists, or against the operation of massage clinics, offices, or establishments, and submit its findings to the Director of Health with appropriate comments and recommendations.

EXAMINATION AND REGISTRATION FOR MASSAGISTS

3. *Date and place of examination.*—Examination for massagists shall be held at the Bureau of Health in Manila, twice a year, to wit: on the first Saturday of June and December. In excepitonal cases, the Committee, with the approval of the Director of Health, may give examinations on other dates outside the regular prescribed ones.

4. *Qualifications of applicants for examination.*—Applicants for examination must possess the following qualifications:

(*a*) He must be a Filipino citizen, not less than 21 nor more than 60 years of age, of gool moral character, and vouched for by 2 citizens of good standing in the community where the applicant resides.

(*b*) He must be a graduate of the regular high school course in any public or recognized private school, or its equivalent.

(*c*) He must be a holder of a title, diploma, or certificate in massage, issued by a recognized school or college, the curriculum of which prescribes at least a two-year course, giving instruction and practical training on massage and elements of anatomy, physiology, bacteriology and parasitology, hygiene and sanitation, symptomatology and diagnosis, and ethics and jurisprudence; *Provided,* That, in lieu of the title, diploma or certificate above-required, and while there is no recognized school of massage in operation in the Philippines, an applicant may be allowed to take the examination if he has taken a course on elementary anatomy, physiology, bacteriology and parasitology, hygiene and sanitation, symptomatology and diagnosis, in a recognized school or college; has been duly registered in the office of the secretary of the Committee and has undergone training on practical massage for at least 2 years under a registered massagist.

(*d*) He must be physically fit, free from venereal and skin diseases, tuberculosis, and other communicable diseases, as certified by a medical officer or physician employed by the government.

5. *Scope of examination.*—The examination shall be conducted in English, Spanish, or the National language, and will consist of theoretical and practical questions. The theoretical examination shall be conducted in writing and shall comprise questions on elementary anatomy, physiology, bacteriology and parasitology, sanitation and hygiene, ethics and jurisprudence. The practical examination shall consist of the preparation of the patient for massage; force of massage treatment; remedial exercises; medical and gymnastics, technique and practice of massage; therapeutic massage applied on the shoulder joints, neck, head, spinal column, chest, abdomen, shoulders, elbows, wrists, head of femur, hip, knees, ankle joints, etc.

6. *Passing average.*—The theoretical examination shall be given a weight of 25 points and the practical, 75 points.

In order that a candidate may be deemed to have passed the examination successfully, he must have obtained a general average of 75 per cent without falling below 50 per cent in either the theoretical or practical examination; *Provided*, That candidates who fail in any examination may be allowed to take the next regular examination; and *Provided, further*, That those who fail in 3 consecutive examinations shall be debarred from succeeding ones.

CERTIFICATE OF MASSAGIST

7. *Requirements.*—All persons who have passed the examination will receive a Certificate of Massagist signed by the members of the Committee and approval by the Director of Health. This certificate shall bear a recent picture and signature of the successful candidate, and will be valid for one calendar year only.

8. *Renewal.*—

(*a*) The renewal of the Certificate of Massagist for any subsequent year may be made on the one already issued to him upon presentation thereof to the Chairman of the Committee, together with the certificate of a recent physical examination issued by a government physician and when found in order, the said certificate may be stamped with the notation "VALIDITY EXTENDED FOR THE YEAR ———". The year for which the renewal is made will be duly indicated in the blank space, and below it will be the signature of the. Chairman of the Committee. The renewal should be made not later than the last day of February of each year.

(*b*) In the provinces, the renewal may be applied for in writing through the District Health Officer stating the cause of the inabiilty of the applicant to appear in person at the central office of the Bureau of Health in Manila. The District Health Officer will identify the applicant, certify to his physical fitness and freedom from venereal and skin diseases, tuberculosis and other communicable diseases, and transmit the certificate to the Director of Health with his recommendation.

(*c*) A registered or qualified massagist who fails to renew his certificate during the period of 5 or more consecutive years, may file an application for a new one. The application should be supported by documentary evidence and by a sworn statement stating the reasons for his failure to renew the certificate during such period of time. The Committee will satisfy itself that the applicant for renewal is not in any manner incapacitated to engage in the practice of massage, then submit the case, with pertinent recommendation, to the Director of Health whether he is to take another validating examination or be issued a new certificate.

9. *Issuance and revocation.*—The Committee may refuse to issue the Certificate of Massagist to a successful candidate who has been convicted by a court of competent jurisdiction of any offense involving moral turpitude or dishonorable conduct. In such case, the reason for the refusal shall be communicated to the applicant in writing. In the same manner, the Committee may refuse to renew a certificate or recommend the revocation of any certificate already issued to a massagist, who has been found guilty of the above-mentioned crimes or may recommend a lesser punishment such as temporary suspension of the certificate for violation of any of the provisions of this Order.

PRACTICE OF MASSAGE

10. *Practice of Massage.*—No person shall practice massage unless he is a holder of a Certificate of Massagist issued by the Committee and approved by the Director of Health, as provided for in this Administrative Order. No massagist shall engage in any other occupation which may infect his hands and transfer the disease to other persons.

11. *Use of "Dr." and M.D." signs.*—It is absolutely prohibited for any qualified or practicing massagist to use the "Dr." sign before, or the letters "M.D." after his name in advertising his profession in the newspapers, cards, signboards or any other means of advertisement.

12. *Treatment of diseases.*—Qualified massagists are forbidden to treat any kind of disease without prescription of a duly qualified physician. Any person presenting himself for therapeutic massage to a qualified massagist should not be handled unless he shows a prescription signed by a duly qualified physician.

13. *Address of massagists.*—The address of massagists should be registered with the Secretary of the Committee. Any change of address should be promptly reported to the secretary.

QUALIFICATIONS OF ATTENDANT IN MASSAGIST CLINIC OFFICE, OR ESTABLISHMENT

14. *Qualifications of attendants.*—All persons employed by any massage clinic, office, or establishment, should possess the following qualifications:

(*a*) He must be a Filipino citizen, or not less than 21 nor more than 60 years of age;

(*b*) He must have satisfactorily completed the first two years of High School course in a public, or recognized private school, or its equivalent;

(*c*) He must be physically fit, and free from venereal or skin diseases, tuberculosis or any communicable diseases as evidenced by a health certificate issued by a government physician, such health certificate to be renewed every three months or oftener as circumstances require;

(*d*) He must have undergone an adequate and satisfactory training for at least 6 months under a practicing massagist and certified by the latter as to his proficiency in the practical technique of massage; and

(*e*) He must present two testimonials as to his moral character from 2 persons of good moral standing in the community where he resides.

15. *Other requirements for massage attendants.*—

(*a*) Attendants in massage clinics, offices, or establishments, when rendering services to a patient or patron, shall be under the personal supervision and responsibility of the practicing massagist in charge of the massage clinic, office, or establishment; and

(*b*) All persons desiring to undergo training as attendants in a massage clinic, office, or establishment, shall first secure permission from the Committee and register in the record of the Secretary of the Committee:

MASSAGE CLINIC OR OFFICE, OR MASSAGE ESTABLISHMENT

16. *Requirements for massage clinic or office, or massage establishment.*—The operation of a massage clinic or office, or massage establishment, shall be subject to the following requirements;

(*a*) No massage clinic or office, or massage establishment, shall be operated without a "Sanitary Permit" issued by the Director of Health upon recommendation of the Committee. This Sanitary Permit shall be valid for one year, and must be renewed on or before the last day of February of each calendar year; *Provided, however,* that massage clinics or offices, or massage establishments, which are already in operation on the date this Administrative Order takes effect shall be given a period of 60 days within which to secure their "Sanitary Permits";

(*b*) No massage clinic or office shall operate more than 2 rooms, while massage establishments may operate any number of rooms;

(*c*) For every massage clinic or office there shall be employed 1 massagist, and for each room 1 massage attendant whenever the clinic or office is operated with the maximum number of rooms authorized in the preceeding paragraph (2 rooms).

(*d*) Massage establishments shall employ 1 massagist for every 2 rooms, and 1 massagist attendant for each room; *Provided,* That any extra room shall be under one massagist.

(*e*) The rooms shall be provided with sliding curtains instead of the ordinary doors or swing doors;

(*f*) These rooms shall be provided facilities for washing and disinfecting the hands of attendants and massagists and the necessary equipment;

(*g*) Sanitary toilet facilities should be easily accessible to patients or patrons;

(*h*) There shall be kept at all times sufficient number of clean sheets and towels for the use of patrons and clinic employees;

(*i*) Massage clinics shall at all times be maintained in good sanitary condition; and

(*j*) Massage clinics, offices, or establishments shall be open for inspection to the Committee or any of its members, at any time of the day or night.

VIOLATION

17. *Violations.*—Violation of any part, or parts, of this Administrative Order shall be sufficient cause for cancellation, temporary or permanent, of a Certificate of Massagist; for closure, temporary or permanent, of a massage clinic, office, or establishment; or for prosecution before a court of justice of the person or persons committing the violation.

18. *Repealing clause.*—Administrative Order No. 103, series of 1933, as amended by Administrative Order No. 6-C, series of 1938, and all other rules and regulations, or parts thereof, inconsistent with the provisions of this Administrative Order, are hereby declared null and void.

This Administrative Order shall take effect on August 4, 1953.

REGINO G. PADUA
(Undersecretary of Health)
Acting Director of Health

Approved, August 4, 1953.

JUAN SALCEDO, JR.
Secretary of Health

Department of Commerce and Industry

CIVIL AERONAUTICS ADMINISTRATION

ADMINISTRATIVE ORDER NO. 26
Series of 1953

December 29, 1953

PRESCRIBING THE RULES AND REGULATIONS GOVERNING AIR TRAFFIC CONTROL AND AIRCRAFT IDENTIFICATION PROCEDURE WITHIN THE PHILIPPINE AIR DEFENSE IDENTIFICATION ZONE PURSUANT TO THE PROVISIONS OF ADMINISTRATIVE ORDER NO. 222 OF THE PRESIDENT OF THE PHILIPPINES DATED NOVEMBER 21, 1953.

SECTION I—GENERAL

1. *Definitions*—For the purpose of this Regulation, the following definitions apply:

1.1 *Philippine Air Defense Identification Zone (PADIZ).*—The airspace over 3,000 feet above mean sea level bounded by the following coordinates: 12° N, 124° E; 12° N, 117° E; 19° N, 117° E; 19° N, 124° E.

1.2 *Local Flying.*—Flights within established local flying areas and between parent bases and auxilary bases of the parent base, and between such auxiliary bases, provided that no landings are to be made at other than the parent or auxiliary bases. (The term "bases" includes airfields, aerodromes, and aircraft carriers or other vessels tending aircraft.)

1.3 *Flight Plan.*—Specified information provided to air traffic services units, relative to the intended flight of aircraft.

1.4 *Defense Visual Flight Rules (DVFR) Flight Plan.*—The flight plan required of VFR flights which originate within or penetrate the PADIZ at an altitude over 3,000 feet above mean sea level and/or cruise at more than 110 knots indicated airspeed.

1.5 *Appropriate Aeronautical Facility.*—The normal communications facility with which flight plans or position reports are filed, and may either be a CAA, PAF, USAF, USN, or PAL station as far as, in the case of the PAF, USAF, USN, and PAL are willing, by arrangement, to render the service.

1.6 *Reporting Point.*—A specified geographical location in relation to which the position of an aircraft can be reported.

1.7 *Position Report.*—Information transmitted to an appropriate aeronautical facility in accordance with the information and procedures specified in the latest Aeronautical Information Publication (AIP).

2. *Violations.*—Reports of violations of the PADIZ rules and regulations will be processed in accordance with procedures established by the Philippine Civil Aeronautics Administration and the Philippine Air Force.

3. *Communications.*—Direct communication between all agencies and/or units is authorized for the purpose of coordinating the procedures outlined herein.

SECTION II—OPERATION OF AIRCRAFT IN THE PADIZ

4. *Conformity with Rules and Procedures.*—Pilots-in-command entering or operating within the PADIZ will conform to the rules and procedures set forth in this Section.

5. *Flight Plans and Reporting Procedures*

5.1 Flight plans for flights, part or all of which will be conducted in the PADIZ, will normally be filed prior to take off with an appropriate aeronautical facility.

5.2 Flight plans for flights which originate at points where there are no appropriate aeronautical facilities will be filed at first opportunity after becoming airborne.

5.3 Flight plans for flights which will remain below 3,000 feet above mean sea level and/or cruise at not more than 110 knots indicated airspeed need not be filed by reason of this regulation.

5.4 *IFR Flights*

5.4.1 IFR flights within Control Zones and Control Areas shall be governed by the existing IFR rules provided in Chapter 6, Administrative Order No. 9, Series of 1953 (CAA).

5.4.2 For IFR flights outside Control Zones and Control Areas, the reporting procedures specified for DVFR flights in Paragraph 5.5.2 below will apply.

5.5 *VFR Flights*

5.5.1 Flight plans filed for VFR flight will be preceded by the letter "D" (DVFR) and shall include the route, airspeed, and altitude while within the PADIZ.

5.5.2 *DVFR Flights Without Two-Way Radio Communications.*—These flights may operate within the PADIZ or enter the PADIZ provided that the pilot-in-command adheres to a filed flight plan which will include the point of penetration of the PADIZ and estimated elapsed time to the point of penetration.

5.5.3 *DVFR Flight With Functioning Two-Way Radio Communications.*—The pilot-in-command of an aircraft with functioning two-way radio communication will not enter or operate within the PADIZ over 3,000 feet above mean sea level until or unless:

(*a*) He has reported to an appropriate aeronautical facility the time, position, and altitude at which the aircraft passed the last reporting point along the flight path of the aircraft prior to penetration of the PADIZ and his estimated time over the next reporting point along the in-

tended flight path of the aircraft; or if compliance with the above reporting procedure is impracticable;

(*b*) A report has been made to an appropriate aeronautical facility, which contains the estimated time, position and altitude at which he will penetrate the PADIZ, utilizing established reporting points as practicable; or

(*c*) Other arrangements have been made by aircraft operators with the Civil Aeronautics Administration.

5.6 *Local Flying*

5.6.1 *Local IFR Flights.*—Normal procedures, including present reporting and emergency procedures will apply.

5.6.2 *Local VFR Flights.*—Local VFR flights conducted above an altitude of 3,000 feet above mean sea level in the PADIZ will be normally performed within prescribed areas (such as acrobatic areas) so that ready identification will be possible. Establishment of suitable areas for training is encouraged.

5.7 *Mass Flights*

5.7.1 The flight plan of mass flights will contain in the remarks section, the identification or serial number of each aircraft in the flight.

5.7.2 When mass flights are flown in other than close formation, each aircraft individually will make position reports as required in this paragraph.

5.7.3 Aircraft in mass flight will comply with the provisions of paragraph 8.

5.8 *Adherence to Flight Plans or Air Traffic Clearance*

5.8.1 *IFR Flights*

5.8.1.1 *Within the Control Zone and Areas.*—No deviation will be made from an air traffic clearance unless an amended clearance is obtained from CAA air traffic control.

5.8.1.2 *Outside Control Zones and Areas.*—When a flight is conducted in accordance with IFR within or into the PADIZ where an air traffic clearance is not required by the Civil Air Regulations or appropriate military regulations, no deviation from the flight plan, as filed, will be made unless prior notification is given to an appropriate aeronautical facility.

5.8.2 *DVFR Flights.*—No deviation will be made from a DVFR flight plan unless prior notification is given to an appropriate aeronautical facility.

5.8.3 *Time, Distance, and Altitude Tolerances.*—In order to adhere to a flight plan, or an air clearance, a pilot-in-command of an aricraft will not exceed the following tolerances:

(1) *Time.*—Ten miuntes from an estimate over a reporting point or points of penetration; or, in the case of a flight originating within the PADIZ, ten minutes from the proposed time of departure specified in the flight plan, unless the flight is conducted in accordance with IFR in a control area.

(2) *Distance.*—Ten miles from the centerline of the Airway or route of flight within 100 miles of Manila, otherwise twenty five miles from the centerline of the airway or route, unless otherwise restricted.

(3) *Altitude Deviation.*—A pilot-in-command of an aircraft when on a DVFR flight plan for which air traffic clearance is required will not deviate from the cruising altitude specified in the flight plan unless prior notification is given to an appropriate aeronautical facility, except that he may begin descent from the altitude specified in the flight plan within reasonable distance of destination, without reporting change of altitude. IFR flights will follow existing rules provided for in Chapter 6, Administrative Order No. 9, Series of 1953 (CAA).

5.8.4 *Revision of Flight Plan.*—The pilot-in-command of an aircraft will immediately transmit corrected information to an appropriate aeronautical facility when it becomes evident that a previously filed estimated time over a reporting point or points of penetration of the PADIZ is in error in excess of the time and distance tolerances indicated in 5.8.3 (1) and 5.8.3 (2) above.

5.8.5 *Change of Flight Plan, IFR to DVFR.*—Pilot-in-command of IFR flights subject to the provisions of this Regulation who desires to change to a VFR flight plan in the air before the PADIZ portion of the flight is completed, will request the change to be made as DVFR instead of VFR, unless the flight is to be completed under the prescribed 3,000 feet above mean sea level in which case the IFR plan can be cancelled.

6. *Emergency Procedures.*—In emergency situations which require immediate decision and action for the safety of the flight, the pilot-in-command of the aircraft may deviate from the provisions of this Regulation to the etxent required for such emergency. When a deviation is exercised the pilot-in-command will, as soon as possible after such emergency authority is exercised, inform an appropriate aeronautical facility of the deviation.

7. *Radio Failure*

7.1 *IFR Flights.*—In case of the failure of two-way radio communications, the pilot-in-command of the aircraft will proceed as prescribed in Paragraph 6.3.5.2, Administrative Order No. 9, Series of 1953 (CAA).

7.2 *DVFR Flights.*—In case of the failure of two-way radio communications, the flight may proceed in accordance with the original DVFR flight plan and the pilot-in-command of the aircraft will make a report of such failure, as soon as possible, to an appropriate aeronautical facility.

8. *Air Defense Security Instructions.*—Under emergency air defense conditions which may involve the national security, aircraft will be operated into or within the PADIZ in accordance with such

additional special security instructions as may be issued.

9. *Effectivity.*—This shall take effect upon approval.

VICTOR H. DIZON
(Lt. Col., PAF)
Acting Administrator

ADMINISTRATIVE ORDER NO. 33
Series of 1954

Pursuant to the provisions of paragraphs 7 and 9, section 32, Republic Act No. 776, approved June 20, 1952, the following rules and regulations are hereby promulgated for the observance of all persons concerned:

This Administrative Order shall be known as Civil Air Regulations, Part XIV–A, governing the construction of heliports, whether national, provincial, municipal or private, and any reference to said title shall mean as referring to this Administrative Order.

CHAPTER I.—DEFINITIONS

As used in these rules and regulations the following terms shall have the following meanings:

1.1 *Heliport.*—A defined area on land or water (including structures) intended to be used for the arrival, departure and movement of helicopters or rotocrafts.

1.2 *Touchdown pad.*—The center portion of the heliport where the helicopter lands or takes-off; the landing area for a helicopter.

1.3 *Safety area.*—The outer portion of the heliport surrounding the touchdown pad.

1.4 *Administrator.*—The administrator of the Civil Aeronautics Administration.

1.5 *Angle of approach.*—The angle of approach is formed by the horizontal line and an inclined line originating from the edge of the touchdown pad and extending upward and outward.

CHAPTER II.—GENERAL PROVISIONS

2.1 *Classification and rating.*—For purposes of uniformity in the classification of aerodromes in general, a heliport shall be classified, designated, and rated in accordance with the classification of airports and landing fields laid down in Executive Order No. 73 dated December 3, 1936.

2.2 *Use of heliports.*—No heliport shall be used in air transportation unless such heliport and its facilities has been approved as safe and suitable for the type of operation it is designated to serve.

2.3 *Rating Certificate.*—Upon inspection and after the heliport has been found to with the minimum standards set by these regulations a certificate as to the suitability of the heliport, the type of operation it is designated to be used shall be issued by the Administrator.

2.4 *Applicability of Aeronautics Bulletin No. 8.*—Except as herein provided in these regulations, whenever practicable, the provisions of Aeronautics Bulletin No. 8 (Revised), entitled "Airport Construction and Rating Regulations" effective January 16, 1947 shall be made applicable in the determination of the suitability, construction and maintenance of heliports and its operational requirements.

2.5 *Site Selection for a heliport.*—The following factors, other than those usually required for constructing aerodromes under Aeronautics Bulletin No. 8 effective January 16, 1947, mentioned above, shall be considered for the purpose of selecting a site for a heliport, namely:

a. The area the heliport is designated to serve
b. Type of activity for which it is proposed to serve
c. Clear channels of approach
d. Separation from the fixed-wing aircraft operation, service maintenance
e. Number of rotorcrafts using the site
f. Obstructions surrounding the proposed heliport
g. Soil conditions
h. Proximity to city centers and ground transportation, facilities such as roads, railroads, and water ways
i. Volume of traffic the proposed heliport is expected to serve
j. Such other factors as shall be considered to permit safe and economical operations under normal conditions

2.6 *Minimum landing area for a heliport.*—The size of the landing area is conditioned by the following factors:

a. Size of the heliport, i.e., its length and space
b. Required obstruction clearance
c. Angle of approach
d. Rate of movement, or number of helicopter to land and take off in the area at a time
e. Operational conditions of landing, i.e., visual or instrument

2.5 *Location and Siting of heliport.*—The location and siting of a heliport taking into consideration the air traffic such heliport is intended to serve shall be determined by the Administrator.

2.6 *Heliport reference point and elevation.*—The Administrator shall determine the position of the heliport reference point to be given in terms of the nearest second of latitude and longtitude; and shall determine the heliport elevation to be given in terms of nearest foot or meter.

CHAPTER III—GROUND SITE HELIPORT

3.1 *Location of ground site of heliport.*—Where a ground heliport is to be constructed in a major airport, it should be located where landings and take-offs may be made without taxiing.

3.2 *Number of touchdown pads.*—The number of helicopters to land and take-off at a time will determine the number of touchdown pads in a ground site heliport.

3.2.1 *Distance between safety areas.*—Where more than one touchdown pad is provided the minimum

distance from edge to edge of the safety areas shall be not less than 100 feet.

3.3 *Shape.*—A touchdown pad may be a square, a rectangle, or a circle.

3.4 *Size.*—To determine the size of a touchdown pad, the side of the square, the shorter side of the rectangle or the radius of the circle shall at least be equal to twice the diameter of the rotor blades but in no case will it be less than 50 feet.

3.5 *Safety Area.*—The safety area around the touchdown pad shall extend to at least 50 feet from the outer edge of the touchdown pad.

3.6 *Fence.*—A ground site heliport shall be enclosed by a fence having a minimum height of 4 feet to prevent trespassing. In no case will the height of the fence protrude above the line of approach. However, in a major aerodrome, fencing may not be necessary or under the conditions stated in paragraph 5.5 of these regulations.

CHAPTER IV.—ROOF-SITE HELIPORT

4.1 *Size and shape of touchdown pad.*—The size and shape of touchdown pads in a roof-site heliport shall be the same as that required for ground-site heliport.

4.2 *Strength of touchdown pad in a roof-site heliport.*—The strength of the touchdown pad of heliports in the roof shall be such that the contact surface of the roof can withstand a minimum of 2½ times the static load on each wheel or ski of the helicopter or rotorcraft, as the case may be.

4.3 *Guard rail.*—Heliports on roofs not having the protection of a parapet of adequate height shall be provided with a guard rail at least 4 feet high.

CHAPTER V.—REQUIREMENTS COMMON TO HELIPORT

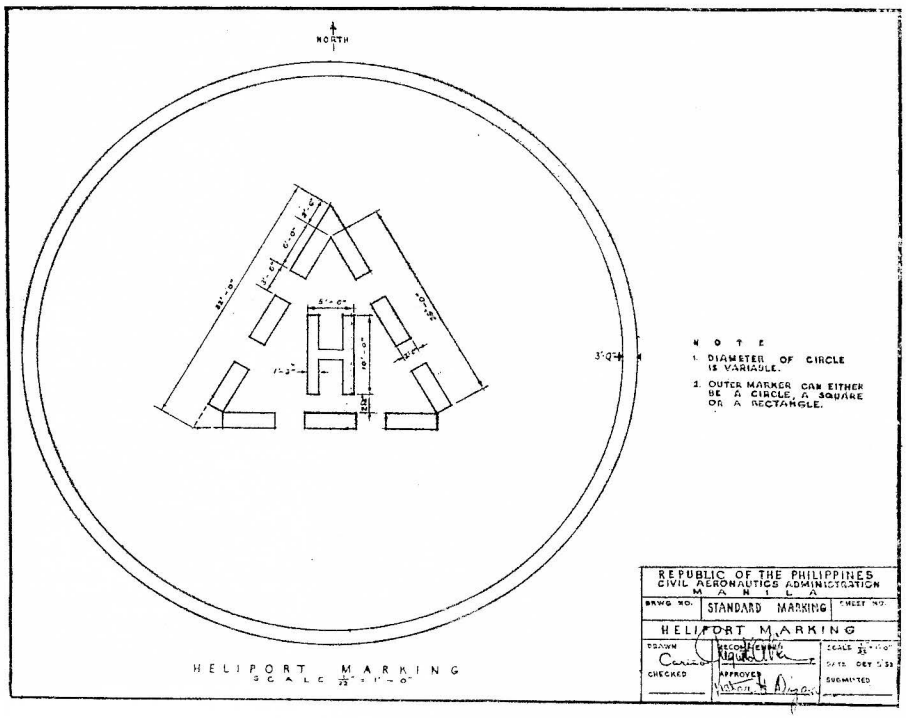
5.1 *Angle of approach.*—The angle of approach to a heliport at 35° with the horizontal is normally considered desirable.

5.2 *Boundary Day Markers—Application.*—The boundary of the touchdown pad shall be marked.

5.2.1 *Location of boundary day markers.*—Boundary markers shall be placed along the boundary of the touchdown pad for the purpose of marking clearly the limits of the touchdown pad.

5.2.2 *Width of boundary day markers.*—The width of the boundary day markers shall be at least 3 feet wide.

5.3 *Characteristics of the touchdown pad.*—The center portion of the touchdown pad shall be marked by an equilateral triangle with figure or a letter "H" in the center. The upper vertex of the triangle and the letter "H" shall be oriented toward the north. The "H" shall be 10 feet high, 5½ feet wide, and its legs and horizontal bar 1¼ feet wide. The geometric centers of the letter "H" and the equilateral triangle should coincide. The base of the equilateral triangle shall compose of 3 equal segments, each segment 6 feet long, 2 feet wide, and spaced at intervals of 3½ feet. The inner corners of the outer segments of the base of the triangle shall converge with the inner corners of the lower segments of the legs of the triangle. (Please see attachment "A" showing the sketch of a standard heliport marking). The two legs



of the triangle shall be composed of 5 segments altogether spaced at interval of 3½ feet. The upper segments of the legs of the triangle forming an inverted "V" shall measure 9½ feet in its outer dimensions, 6 feet in the inner and 2 feet wide. The middle and lower segments of the legs of the triangle shall be 6 feet long and 2 feet wide.

5.4 *Characteristics of markers.*—The markers shall be made of concrete stone boulders or of embedded stones in materials which cannot be readily broken away. All markers shall be laid flash to the ground with the edges chamfered.

5.5 *Color.*—The color of the heliport markers shall be in contrast with the surrounding ground, preferably white.

5.6 *Wind direction indicator.*—The heliport shall be provided with a wind direction indicator.

CHAPTER VI—NIGHT MARKERS

6.1 *Rotating beacon.*—If the heliport is not located in an airport, it must be provided with a flashing or rotating beacon showing distinctive light signals.

6.2 *Boundary lights.*—The boundary of the touchdown pad shall be lighted with suitable boundary lights.

6.3 *Flood lights.*—When necessary flood lights may be used to light the touchdown pad provided that no light shall show above the horizontal.

CHAPTER VII–OBSTRUCTION AND CLEARING OF OBSTRUCTION

7.1 The safety area shall be kept clear of any object.

7.2 Any object protruding above the imaginary inclined line from the perimeter of the safety area going upward and outward at a slope provided in section 5.1 shall be considered as an obstruction.

7.3 Any person, animal, vehicle or craft inside the heliport shall be considered as an obstruction.

7.4 *Clearing.*—All obstructions referred to in section 7.2 and 7.3 shall be removed. All obstructions not removed shall be marked by lights, painting or day marking device as set forth in section 3, Aeronautics Bulletin No. 8, effective January 16, 1947.

CHAPTER VIII–EFFECTIVITY

8.1 These regulations shall take effect upon approval.

Approved, April 8, 1954.

URBANO B. CALDOZA
Acting Administrator

Approved:

OSCAR LEDESMA
Secretary of Commerce and Industry

ADMINISTRATIVE ORDER NO. 35
Series of 1954

SECTION 1.—Section 3, paragraph 3.1 of Administrative Order No. 6, promulgated on February 19, 1953 is hereby amended to read as follows:

"3. Nationality and Registration Marks and Colors to be Used.

3.1 Every aircraft, duly registered with the CAA shall display the registration marks assigned to such aircraft. The aircraft shall be painted with a color that shall facilitate its delineation from other objects whether in flight or on the ground. The nationality and registration marks appearing on the aircraft shall consist of a group of characters painted in colors contrasting to the color of airplane.

Note: Such colors as black, brown and any shade of green which tend to blend the aircraft with surrounding terrain and vegetation are considered objectionable for the purposes of this rule."

SEC. 2. This shall take effect upon approval.

URBANO B. CALDOZA
Acting Administrator

Approved, May 4, 1954.

OSCAR LEDESMA
Secretary of Commerce and Industry

ADMINISTRATIVE ORDER NO. 36
Series of 1954

SECTION 1.—Chapter IX, paragraph 9.1.1 (*c*) of Administrative Order No. 10 promulgated on April 1, 1953 is hereby amended to read as follows:

"9.1.1 Before a pilot acts as pilot-in-command of an aeroplane on a particular route for which he has not been previously qualified:

* * * * * * *

(*c*) He shall have demonstrated to the operator, knowledge of the terrain, the seasonal meteorological conditions, the communications and navigational facilities and procedures, and the location of search and rescue facilities and procedures, which are associated with the route."

SEC. 2. This shall take effect upon approval.

URBANO B. CALDOZA
Acting Administrator

Approved, May 4, 1954.

OSCAR LEDESMA
Secretary of Commerce and Industry

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

(Confirmed by the Commission on Appointments)

April 28, 1954

Urbano B. Caldoza as Administrator of Civil Aeronautics Administration.

Enrico Palomar as Assistant Director of Posts.

Antonio M. Castro as Deputy Commissioner of the National Employment Service.

Andres M. Llames as Provincial Treasurer of Quezon.

Bernardino C. Mendoza as Provincial Treasurer of Sorsogon.

Felix Talabis as Second Deputy Commissioner of the Bureau of Immigration.

Aurelio Lopez as City Engineer of Bacolod City.

Jose Rendon as Clerk of Court of Surigao.

Honorato B. Edaño as City Assessor of Manila.

Mrs. Frine C. Caballero as Solicitor in the Office of the Solicitor General.

Alfredo M. Celi as First Assistant City Attorney of Davao City.

Mariano Dy Reyes and Valentin de los Reyes as Members of the Board of Assessment Appeals of Laguna.

Maximo Calalang, Isaac Sayoc, and Hilarion Henares, Jr., as Members of the Board of Directors of the National Shipyards and Steel Corporation.

Teodoro Valencia, Mrs. Trinidad F. Legarda, Mrs. Pilar Hidalgo Lim, Mrs. Lourdes M. Garcia, Mrs. Dolores Paredes-Leviste, Mrs. Carmen Vasquez, Mrs. Enriqueta Benavides, Mrs. Felipe Monserrat, Mrs. Fermina Santos, Jose Guevarra, Feliciano V. Reyes, Narciso Pimentel, Jr., and Limneo Platon as Members of the Board of Review for Motion Pictures.

Teodulo Tandayag as Vice Mayor of Ormoc City.

Teofilo Sanchez, Godiardo Guillen, and Vicente Galicia as Members of the Municipal Board of Butuan City.

Leocadio Alfaro and Alfredo Cariño as Members of the City Council of Zamboanga City.

Ramon Arnaldo as Member of the Municipal Board of Legaspi City.

Dominador Quirez as Justice of the Peace of Dinalupihan, Bataan.

Salvador Peralta as Justice of the Peace of New Washington, Capiz.

Godofredo Cabahug as Justice of the Peace of Hagonoy, Davao.

Vicente Cavalida as Justice of the Peace of Malalag, Davao.

Ignacio Lambo as Justice of the Peace of Doña Alicia, Davao.

Orlando Rimando as Justice of the Peace of Governor Generoso, Davao.

Juan Guevarra as Justice of the Peace of Babak, Davao.

Augusto Arreza as Justice of the Peace of Madrid, Surigao.

Peter Nonakil as Auxiliary Justice of the Peace of Magdalena, Laguna.

Felixberto D. Jaldon as Chief of Police of Zamboanga City.

Nicanor Quimson as Chief of the Fire Department of Dagupan City.

May 5, 1954

Jose Castillo, Jr., Hermogenes Dimaguiba, and Ramon Siytangco as Members of the Board of Directors of the Price Stabilization Corporation.

Eligio Tavanlar, Ulpiano Sarmiento, and Felix Padilla as Members of the Board of Directors of the National Shipyards and Steel Corporation.

Cristobal Santiago as Member of the Board of Directors of the Metropolitan Water District.

Pio Advincula as Provincial Treasurer of Bulacan.

Pedro K. Coronel as Provincial Treasurer of Rizal.

Eulogio Mencias as Judge-at-Large of First Instance.

Macapanton Abbas as Cadastral Judge.

Vicente Gonzales as Provincial Assessor of Batangas.

Pedro Merrera as Register of Deeds of Pangasinan.

Dr. Carlos V. Matriano as City Health Officer of Tacloban City.

Rafael Alvarez as Member of the Provincial Board of Negros Occidental.

Lucas Pascual as Member of the City Council of Quezon City.

Vicente Novales as Chief of Police of Quezon City.

Primo Cordeta as Chief of the Fire Department of Tacloban City.

Tirso C. Caballero as Justice of the Peace of Lumban, Laguna.

Leopoldo Peñera as Justice of the Peace of Tupi, Cotabato.

Julio R. Garcia as Justice of the Peace of Dinaig, Cotabato.

Leocadio Magat, Jr., as Justice of the Peace of Libertad, Antique.

Jose L. Baltazar as Justice of the Peace of San Fernando, Pampanga.

Pedro Tabago as Justice of the Peace of Caguait, Surigao.

Daniel Sindo as Justice of the Peace of Lianga, Surigao.

Cecilio Tady as Justice of the Peace of Lemery, Iloilo.

Prudencio Papa as Auxiliary Justice of the Peace of Magallanes and Bailen, Cavite.

May 12, 1954

Sotero Cabahug as Secretary of National Defense.

Alfredo Montelibano as Administrator of the Office of Economic Coordination.

Jose M. Crisol as Undersecretary of National Defense.

Juan Concon as Deputy Administrator of the Office of Economic Coordination.

Mariano G. Pineda as Commissioner of the Securities and Exchange Commission.

Anselmo T. Alquinto as Director of Planning of the National Planning Commission.

Raul T. Leuterio as Envoy Extraordinary and Minister Plenipotentiary of the Republic of the Philippines, with the rank of Chief of Mission, Class II (Ex officio Principal Officer, Philippine Consulate General, New York City).

Nicanor A. Roxas as Foreign Officer, Class I.

Nicanor A. Roxas as Consul General of the Republic of the Philippines.

Rodolfo H. Severino as Foreign Affairs Officer, Class IV.

Primitivo Buagas as Provincial Governor of Cotabato.

Fidel Dones as Mayor of Cavite City.

Miguel Yuvienco as Provincial Treasurer of Cavite.

Melecio Palma as Provincial Treasurer of Camarines Sur.

Leon C. Miraflores as Provincial Treasurer of Iloilo.

Rodrigo V. Amistoso as Provincial Treasurer of Capiz.

Antonio N. Zabala as Provincial Treasurer of Leyte.

Irineo V. Lapres as Provincial Treasurer of Negros Occidental.

Francisco Dimatera as Provincial Treasurer of Palawan.

Andres Z. Serrano as Provincial Treasurer of Romblon.

Gregorio Bustamante as City Treasurer of Cavite City.

Bernardo Agustin as City Treasurer of Tacloban City.

Vicente O. Celestial as City Treasurer of Tagaytay City.

Zacarias N. Orbe as City Treasurer of Dansalan City.

Zoilo Balmaceda as City Treasurer of Naga City.

Juan O. Chioco as Chairman of the Board of Directors of the National Rice and Corn Corporation.

Wenceslao Pascual as Chairman of the Board of the Metropolitan Water District.

Alberto Jamir as Member of the Board of Directors of the Price Stabilization Corporation.

Isidro C. Borromeo, Meliton G. Soliman, and Antonio Consing as Solicitors in the Office of the Solicitor General.

Lino L. Añover as City Attorney of Tacloban City.

Joaquin Hacbang as Clerk of Court of Leyte.

Augusto M. Racelis as Clerk of Court of Camarines Norte.

Leopoldo L. De Jesus as Register of Deeds of Camarines Norte.

Luis Calderon, Jr., as Register of Deeds of Surigao.

Claudio A. Tirona as City Engineer of Cavite City.

Joaquin Faelnar as City Engineer of Tacloban City.

Zosimo Cablitas as Fifth Assistant Provincial Fiscal of Leyte.

Filomeno Montejo, Jr., as Justice of the Peace of Babatngon, Leyte.

Santiago Buslon as Justice of the Peace of Talibon, Ubay, and Trinidad, Bohol.

Simplicio Apalisok as Justice of the Peace of Alicia, Bohol.

Daniel O. Banks as Justice of the Peace of Pasacao, Camarines Sur.

Isidro Pe as Justice of the Peace of Coron and Busuanga, Palawan.

Noe Amado as Justice of the Peace of San Mateo, Rizal.

Antonio Rodriguez as Justice of the Peace of Las Piñas, Rizal.

Santiago Gayomali as Justice of the Peace of Igbaras, Iloilo.

Paulo Jaro as Auxiliary Judge of Tacloban City.

Mariano Malicudio as Auxiliary Justice of the Peace of Cuartero, Capiz.

Samson Banico as Auxiliary Justice of the Peace of Ivisan, Capiz.

Leonides Sison as Auxiliary Justice of the Peace of Villasis, Pangasinan.

Raymundo Vinluan as Auxiliary Justice of the Peace of Binmaley, Pangasinan.

Julian Alcantara and Pedro Son as Members of the Municipal Board of Cebu City.

Higino C. Pacaña as Assistant Chief of Police of Cebu City.

May 17, 1954

Tomas Velarde as Provincial Treasurer of Marinduque.

Jose L. Recio as Provincial Treasurer of Misamis Oriental.

Eulalio Dolojan as Provincial Treasurer of Samar.

Leonardo Gutierrez as Provincial Treasurer of Batangas.

Marcos Jorge as Provincial Treasurer of Pampanga.

Jose S. Guerrero as Provincial Treasurer of Zambales.

Ciriaco Latonero as Provincial Treasurer of Zamboanga del Norte.

Antero Oida as Provincial Treasurer of Camarines Norte.

Ceferino Fuentes as City Treasurer of Pasay City.

Simon Magpantay as City Treasurer of San Pablo City.

Marcelino Navaleza as City Treasurer of Lipa City.

Marciano A. Solis as City Engineer of Zamboanga City.

Julian Rodriguez as Mayor of Davao City.

Marcelino Navarro as Member of the City Council of Basilan City.

Gualberto de Venecia as Member of the City Council of Dagupan City.

V. T. Argente as Chairman of the Board of Assessment Appeals of Laguna.

Florentino Segovia as Member of the Board of Assessment Appeals of Antique.

Damaso V. Abeleda and Jaime Rosales as Members of the Board of Assessment Appeal of Mindoro Occidental.

Capt. Rodolfo Andal as Member of the Board of Trustees of the Government Service Insurance System.

Raoul H. Beloso as Member of the Board of Review for Motion Pictures.

Benjamin Alonzo, Benjamin Garcia, and Francisco Marasigan as Members of the Board of Directors of the Manila Railroad Company.

Augusto Sevilla as Chairman, and Dalmacio Urtula, Jr., Sixto Orosa, Jr., Edgardo Villavicencio, Jose Feria, Jose Panganiban, and Ludovico Hidrosollo as Members of the Board of Directors of the Cebu Portland Cement Company.

Vicente Orosa as Chairman, and Isaias Fernando, Cornelio V. Crucillo, Conrado Estrella, and Buenaventura C. Lopez as Members of the Irrigation Council.

May 19, 1954

Jose Fuentebella as Envoy Extraordinary and Minister Plenipotentiary of the Republic of the Philippines.

Felino Neri as Envoy Extraordinary and Minister Plenipotentiary (Chief of Mission, Class II) of the Republic of the Philippines.

Ramon Dado, Jr., as Provincial Treasurer of Bataan.

Matias M. Reyes as Provincial Treasurer of Lanao.

Simeon Bolaño as Provincial Treasurer of Masbate.

Pedro Encarnacion as Provincial Treasurer of Nueva Ecija.

Enrique D. Gaborna as Provincial Treasurer of Mindoro Oriental.

Pedro L. Herrera as Provincial Treasurer of Zamboanga del Sur.

Simplicio Montaño as City Treasurer of Bacolod City.

Primitivo Rondina as City Treasurer of Cayagan de Oro City.

Constancio Ferranco as City Treasurer of Calbayog City.

Aurelio Rojano as Member of the Provincial Board of Camarines Sur.

Pacifico Gutierrez as Provincial Assessor of Cotabato.

Manuel S. Lanuza as City Assessor of Legaspi City.

Eriberto Unson as Clerk of Court of Davao.

Florentino Cariaso as Clerk of Court of La Union

Sixto Villavert as Register of Deeds of Antique

Cipriano Vamenta, Jr., as Provincial Fiscal of Agusan.

Leonardo Magsalin as Assistant Provincial Fiscal of Lanao.

Apolonio Palma as Assistant Provincial Fiscal of Nueva Ecija.

Osmundo Waga as Vice Mayor of Cagayan de Oro City.

Angeles Barranda and Claudio Apuli as Members of the City Council of Legaspi City.

Mamerto Polancus as Justice of the Peace of San Francisco, Cebu.

Juan Bagano as Justice of the Peace of Tudela Cebu.

Ben Almors as Justice of the Peace of Mankayan and Buguias, Mt. Province.

Antonio Cortes as Justice of the Peace of Bakun and Kibungan, Mt. Province.

Jose Sumat as Justice of the Peace of Sablan Mt. Province.

Floramente Tupasi as Justice of the Peace of Solano, Nueva Vizcaya.

Nestor Yatco as Justice of the Peace of Santa Rosa, Laguna.

Domingo Angeles as Justice of the Peace of Calamba, Laguna.

Clodualdo R. de Garcia as Justice of the Peace of Atimonan, Quezon.

Felipe B. Ong as Justice of the Peace of Sto Niño, Samar.

Juan Infante as Justice of the Peace of Almagro Samar.

Guillermo Jurado as Justice of the Peace of Aurora, Zamboanga del Sur.

Armando Ansaldo as Justice of the Peace of Parang, Cotabato.

Domingo Coronel Reyes as Auxiliary Justice of the Peace of Bigaa and Bocaue, Bulacan.

Balbino Roslyn as Chief of the Fire Department of Legaspi City.

Col. Manuel F. Cabal as Brigidier General in the Armed Forces of the Philippines.

Catalino Balili as Chairman and Ambrosio Osmeña as Member of the Board of Assessment Appeals of Cebu.

Jose Lachica as Member of the Board of Assessment Appeals of La Union.

Rafael Estrada as Member of the Philippine Veterans Board.

Cecilio Diez as Member of the Board of Directors of the National Shipyards and Steel Corporation.

Felix de la Costa, Conrado Estrella, and Sergio Ortiz Luis as Members of the Board of Directors of the National Rice and Corn Corporation.

Ramon V. del Rosario as Chairman and Mauro G. Marquez, Alfredo M. Velayo, Oscar J. Arellano, and Federico V. Borromeo as Members of the Board of Directors of the Manila Hotel Company.

Sergio Ortiz Luis, Jack Arroyo, and Bienvenido Clarita as Members of the Board of Directors of the People's Homesite and Housing Corporation.

Jose Fernandez as Chairman and Sergio Bayan, Jose M. Tuazon, Eugenio Puyat, and Vicente Marasigan as Members of the Board of Directors of the National Development Company.

(*Ad interim appointments made by the President*)

May 21, 1954

Froilan Bayona as Judge, Sixth Judicial District, Manila, 1st Branch.

Hermogenes Concepcion as Judge, Sixth Judicial District, Manila, 6th Branch.

Clementino V. Diez as Judge, Fourteenth Judicial District, Cebu, 1st Branch.

Manuel P. Barcelona as Judge, Second Judicial District Baguio and Mt. Province (except Ifugao).

Perfecto A. Reyes as City Engineer of San Pablo City.

Jose Villacorta as Assistant City Attorney of Pasay City.

Pedro S. David as Assistant Provincial Fiscal of Pampanga.

Bernardo Gapuz as Provincial Assessor of La Union.

Antonio F. Garcia as Member of the Philippine Veterans Board.

Felix Marasigan as Justice of the Peace of Perez, Quezon.

Rufino S. Cortes as Justice of the Peace of Mallig, Isabela.

Victorio Alcantara as Justice of the Peace of Caoayan and Bantay, Ilocos Sur.

Eusebio Noble as Auxiliary Justice of the Peace of Echague and Angadanan, Isabela.

HISTORICAL PAPERS AND DOCUMENTS

RADIO TALK OF PRESIDENT RAMON MAGSAYSAY AT THE FORMAL LAUNCHING OF THE 1954 PEACE AND AMELIORATION FUND DRIVE, THURSDAY, APRIL 29, 1954

MY COUNTRYMEN:

IN LAUNCHING this year's fund campaign of the Peace and Amelioration Commission, I am compelled to re-state one of the primary objectives of this administration.

We are pledged to the establishment of peace and the correction of social inequalities which endanger stability and promote the growth of dissidence.

As I have sufficiently emphasized before, the scope of this objective is enormous, and the obstacles are numerous and complex. But it is a task which must be done.

On our success or failure in achieving it will depend whether the future of our country shall be one of freedom and prosperity—as we fully intend it to be—or whether the future of our country shall be one of prostration and surrender to the forces of chaos.

In this crucial undertaking, we cannot— and we must not—take any chances.

Without peace, no accomplishments are possible in the various fields of national endeavor. Without peace, no industries can thrive and our economy shall be threatened with ruin. Without peace, no schools can function properly and our culture shall remain stagnant.

In short, without peace, there can be no progress.

It is true that our internal peace situation has improved, and we have less reasons now to be apprehensive. But at the same time, it cannot be denied that the job of maintaining peace is far from being completed. It is a continuing task which needs all our energy and requires all our vigilance.

This is the reason for our current emphasis on the work of the Peace and Amelioration Fund Commission.

The main purpose of this commission is two-fold—to aid in the prosecution of the drive against dissidence in all its forms, and to help in the amelioration of the lot of the needy and distressed.

As you will grasp at once, the commission's purpose tallies with the broad objectives of the government. The

work of the commission, therefore, is in a sense an extension of the work of the government.

It is in this light that I now appeal to my countrymen, irrespective of political creed, social standing, or economic status to help the Peace and Amelioration Fund Commission. This is a job about which there can be no division of minds, and I am sure that I voice the national sentiment when I say that we are united in our desire to help the less fortunate in our midst.

I have established the Peace and Amelioration Fund Commission in the belief that the welfare of the people is a common responsibility of the government and the community. The government provides leadership and direction, but ultimately no success is achieved in the solution of national problems without the unselfish and active cooperation of the members of the community.

This, I am convinced, is particularly true in the case of our attempt to establish peace and stamp out dissidence.

I look forward to adequate response to this appeal.

PRESIDENT MAGSAYSAY'S LETTER SENT TO THE PHILIPPINE COMMITTEE TO JAPAN, THROUGH FINANCE SECRETARY JAIME HERNANDEZ, IN THE EVENING OF APRIL 29, 1954

April 29, 1954

GENTLEMEN:

I HAVE ASKED you to undertake a most important assignment for our country, and that is, as the wording of your respective designations states, to "survey and appraise present and prospective economic conditions in Japan with a view to assessing in the light of those conditions the amount which Japan can pay as war reparations to the Philippines, and also to provide our government with a body of up-to-date facts regarding Japan to guide this administration in the conduct of our trade relations with that country."

I expect you, in discharging this assignment, to avail yourselves of all sources of information in Japan that can contribute to the general store of information that you are seeking to gather, supplemented by your own personal observations and studies and by the results of the contacts that you will have established with competent parties in that country. I am also making available whatever technical assistance you may need from our own government, and you will obtain such assistance as the need for it arises and you call for it.

There are existing surveys of and studies on the Japanese economy, made several years ago by competent officials of our own government, which you will of course utilize to the full as points of reference. It goes without saying that it is in fact one purpose of your mission to bring these studies up to date, since it is on the basis of present and actual conditions in Japan, and not of conditions as they were some years ago, that you are expected to determine that country's capacity to pay reparations.

Furthermore, there is the consideration that the previous studies had been undertaken under the direction of a previous administration, and while I certainly have the highest respect for the competence, intelligence, and integrity of those who participated in them, this does not alter the fact that the new administration is under obligation to make its own study and gather its own findings, since it will be held fully responsible for whatever action it finally decides to take.

We agreed at my last meeting with you that, as I mentioned earlier, you will tap and avail yourselves of all sources of information on the subject matter of your mission. Inevitably, you will be brought face to face, just as the previous studies had been brought face to face, with facts, figures, and statistics originating from Japanese source. I have no doubt that you will be able to sift such facts, figures, and statistics through a system of checks and rechecks, governed by your own sense of judgment and critical appraisal, to the end that facts shall be separated from fancy, the true from the false, just as presumably was done by those who undertook the prior studies. For this reason, I have no fear at all that you may be "taken in" by the information that shall be made available to you by the Japanese, in the same manner that it has not been charged that the prior investigators were misled by their Japanese sources of information.

I am fully aware of the temptation to approach this matter emotionally. It is an inclination I have experienced myself. But we have no right to let personal feelings enter into a matter of such major importance to the well-being of this nation and its people.

The need to be sober and objective at this time is great. We cannot ignore the primary obligation of safeguarding our present economy and expanding it for the future. Where the livelihood of so many of our citizens is involved, there is no place for the gamble of extremism, there is no

place for anything but patient, firm, and skillful action. The accuracy of your findings will ensure such action.

I wish you success.

Sincerely yours,

RAMON MAGSAYSAY
President of the Philippines

The PRESIDENTIAL FACT FINDING COMMITTEE TO JAPAN
Through Honorable JAIME HERMANDEZ, *Chairman*
Manila

SPEECH OF PRESIDENT MAGSAYSAY ON THE OCCASION OF THE BUSINESS WRITERS ASSOCIATION OF THE PHILIPPINES, GIVING OF AWARDS, AT THE RIVIERA, TUESDAY EVENING, MAY 4, 1954

Mr. CALLEJA,
GENTLEMEN OF THE PRESS,
DISTINGUISHED LEADERS OF THE BUSINESS COMMUNITY,
LADIES AND GENTLEMEN:

I WISH to express my appreciation at having been given this opportunity to offer a brief review of the business policies of my administration and to trace the steps which we have taken to implement those policies.

First of all, let me repeat my assurance that business will get a fair deal under my administration. No one will be forced out of business through unilateral action on the part of the government. On the contrary, legitimate business will be given all the protection it deserves and all the encouragement it needs.

Some confirmed pessimist have been saying that business conditions have deteriorated, and that they will continue to get worse instead of better.

These are counsels of fear.

Necessarily, the achievement of our goals will take some time. It will mean a lot of hard work and patience. But we have set into motion a number of long-range projects which I am sure will alleviate the temporary difficulties under which business labors today.

If there has been a business slowdown, we may attribute this partly to the great world-wide shift from a wartime to a peacetime economy, to the consequences of which the Philippines has not been exempt.

More significantly, the present business slowdown has been the consequence of our lack of economic planning in the past, the result of our failure to adjust to a program of austerity soon enough and quickly enough.

The first thing that my administration has sought to do, therefore, has been to correct this costly error.

To begin with, we have mapped out a new economic program. This program will involve the expenditure of around four billion pesos within a period of five years, or at the rate of ₱800 million a year.

More than half of this cost will be borne by private enterprise; the rest will be shouldered by the government. To help the government defray its share of expenses, a bill is now pending in Congress which seeks to float ₱800 million in bonds.

We want to make sure, however, that this program will be properly carried out and that the allotted funds will be effectively used. To this end, therefore, we have revitalized the National Economic Council, which has been invested with broad powers in the implementation of the national economic program.

One important function of the council is the establishment of a priority system in the enterprises to be developed and expanded. This system has to be set up owing to the fact that our resources are limited, and we must distribute them in such manner that the maximum benefits can be obtained. This means the priority in the allocation of exchange will be given to the more essential business enterprises, and that the distribution of public works, such as the construction of roads, wharves, railroads, and electric plants, will jibe with and complement the system of priorities for economic development.

I am sure this assurance will make all of you happy, since one of the most persistent complaints of businessmen is the unavoidable delay and confusion in the release of funds and the consequent loss of time in starting industrial operations. The priority system will correct all that.

Hand in hand with this program, we are reorganizing our tax collection machinery. We need money not only for the operation of our government but also for financing our development projects. Lax collection methods in the past have caused the loss of a tremendous amount of revenue which otherwise could have been utilized for the improvement of existing services to taxpayers, or the creation of new ones.

In this connection, I wish to assure you that at present the government has no intention of raising the present tax rates. On the contrary, the government intends to encourage business by lessening the burden of taxation on those who feel that they cannot operate freely owing to high taxes and high production costs.

Moreover, we hope to provide further encouragement to business enterprises by exempting from the payment of taxes all new and necessary industries.

To the hard-pressed industries needing financial assistance from the government in the form of tax exemptions or direct financial aid, I wish to give assurance that their needs will be studied thoroughly and that help will be extended to them in accordance with the government's capacity to meet their needs.

We are not going to allow old industries to die because of neglect on our part and thus needlessly throw more people out of work. On the other hand, we cannot allow new industries to languish because of our failure to sense their most urgent needs.

This brings me to the subject of controls. The imposition of controls has been cited as the principal deterrent not only to the inflow of new capital into local industries but also to the entry of foreign capital here.

These controls were never intended to be permanent. They have been instituted as a palliative, as a stop-gap measure designed to check the drain on our foreign exchange reserves and thus stabilize our international reserve position. We have to do this not only to put our economy in a stable position but also to make possible the smooth implementation of our development program.

I am happy our businessmen have shared this broad view of controls. Ultimately, controls are designed to protect our newly established industries by restricting the inflow of imports.

Prospective foreign investors, on the other hand, fear controls under the impression that they might not be able to remit their profits or transfer their capital. This fear is unfounded. Present regulations permit both the remittance of profits and the transfer of capital, subject only to the condition that such will not jeopardize the national economy.

I am sure that those foreign investors who are interested in investing in the long-tern future of the country, and who are not concerned merely with making a "quick killing," will find these conditions sufficiently flexible to permit large-scale business operations.

As I said, the imposition of controls is a strictly temporary measure. It will be lifted just as soon as our international exchange position is made stable.

In our all-out effort to establish a sound economy, I have stressed strongly the rural aspect. This is because of my belief that the barrio is the fundamental starting point of any program which seeks to revitalize the economy and raise the living standards of the people. Better living

standards mean an increase in the purchasing power, and an increase in purchasing power will mean better participation in the fruits of the land among the rural inhabitants who compose 75 per cent of our population.

As long as the bulk of our population remains below the optimum standards of living, there is no hope that we can create a strong middle class which forms the strongest bulwark of every democratic state. And such a middle class ultimately constitutes the firmest support for business in a free enterprise system.

I have no wish to be over-confident, nor do I wish to minimize the known hazards that lie along our course. But I believe that the long-term prospect which faces us is a happy one.

To achieve our goals, however, will involve all our energy and patience, all our capacity for sustained applications, and all the faith and goodwill that we can summon. The task in our time, as I see it, is to lay the foundations of our future on a secure and solid a basis as we can make it.

I trust that we have begun to do so.

PRESIDENT MAGSAYSAY'S SPEECH BEFORE PUBLIC SCHOOLS SUPERINTENDENTS AT THE U. P. HOME ECONOMICS BUILDING, THURSDAY EVENING, MAY 13, 1954

DISTINGUISHED SUPERINTENDENTS,
LADIES AND GENTLEMEN:

I CAN REMEMBER when the *maestro*—in his inevitable *americana and necktie*—was an object of respect, affection, and even of veneration.

Then the wheel turned. For years, no one was more neglected than the poor *maestro*. In social functions, he counted least; his opinions mattered little even in his specialized field of education; and worst of all, he was tolerated as a sort of necessary evil, expendable except for the fact that the children must learn their alphabets.

In my administration, we propose to change all that. We wish to restore the teacher to his proper position of dignity and authority, and we wish to grant him that measure of independence he needs for the fullest exercise of his responsibilities and duties.

In making this assurance, I merely underscore the fact that sound, fully democratic education in one of the basic objectives of this administration.

Moreover, I wish to emphasize that in the pursuit of this objective, the school teachers and officials inevitably play the key roles. If these roles sometimes seem to lack glamor, they are nevertheless of the highest significance to the future of our country

Someone has said that if you win the youth, you win the future. This truism has been perverted by the totalitarians and utilized for the attainment of their own sinister ends.

We, too, wish to win the youth—but not to a slavish and unquestioning devotion to any set of dogmas. On the contrary, we wish to win them over to the appreciation and recognition of the principle and spirit of free and intelligent inquiry.

This is the meaning of democratic education.

Today, we live in a divided world. Our survival in it depends on the kind of decisions that we make.

It is therefore imperative that we learn the issues in their correct light and that we make discriminations and choices among facts undistorted by bias or the desire to mislead.

Needless to say, democratic education must start from the ground up. An education which provides tools only to a self-constituted upper-class elite is worthless. It encourages dangerous delusions among the "educated" and it promotes a grievous social cleavage in which the great majority are prevented from expressing their aspirations and therefore loses touch with the government which is supposed to represent them.

In a word, this kind of education hinders rather than promotes the growth of democracy.

We cannot—and we must not allow this to happen. Fifty years of training in the democratic principles have impressed on us the rightness and fitness of this way of life for our people. We cannot permit it to be endangered so easily.

The object of our national educational policy is not just to produce literate people—meaning people who can read and write—admirable as that is, but to produce people fully equipped to participate in the community activities. The object, in short, is to produce complete citizens—aware of their environment and able, through their training, to adjust themselves to it.

Only through this means can we hope to make democracy mean something to our people.

Through this means, too, we insure the perpetuation of those principles for which, many times in our history, we have given up our very lives.

THE PRESIDENT'S STATEMENT ON THE GOVERNMENT'S STOCK INTEREST IN THE PAL, MAY 17, 1954

IN VIEW of speculation in recent weeks regarding the administration's views concerning the commercial aviation industry in the Philippines, I would like to restate the government's policy.

The government intends to retain a substantial interest in PAL in view of its economic and security importance to the Philippines. The government is not now negotiating or considering any offers that would lead to the sale of any or all of its financial holdings in PAL.

The management which organized and developed this company, headed by Colonel Andres Soriano, will continue to perform this service.

The government's present policy regarding its financial interest in PAL of course does not rule out future consideration of any legitimate offer to purchase some portion of the government's stock. Such consideration would be wholly in accordance with the administration policy to permit, whenever feasible and in the best public interest, private capital to invest in corporations in which public funds have in the past been subscribed. Such private investment, however, must provide real benefit to the airline and to the country.

The national air carrier is an institution identified with the progressive spirit of the country and its future contributions to the national welfare are regarded to be of such importance that it is essential that any revision in the company's financial structure be consistent with and suited to this mission.

The airline's future activities will be substantially dependent on the condition of airports throughout the country. While government financial support of airport development, maintenance, and construction projects can be fully justified on the economic benefit to be derived by the country from a sound air transportation system, airports have an added and more important value in the strategic defense requirements of the Philippines. Consequently, as I have pledged before, the program to improve airports throughout the Philippines is regarded as an essential objective of the administration.

As part of the government's consideration of the requirements of PAL, I have asked the Congress to give priority to a bill authorizing the payment to the airline of ₱3,187,583.25. This amount is owed to the company for past airmail compensation. The appropriation will assist the company in its program of strengthening and expanding services throughout the Philippines.

I would like to reaffirm my belief that PAL will continue as a valuable servant of the nation and that it will, by concentrating wholly on domestic and vital regional operations, suitably fulfill the requirements of a sound air transportation system in the development of the economy of the Philippines.

DECISIONS OF THE SUPREME COURT

[No. L-6669. May 3, 1954]

PEDRO DAQUIS, plaintiff and appellant, *vs.* MAXIMO BUSTOS ET AL., defendants and appellees

DECISIONS; CORRECTION OF ERROR BY APPEAL; FINALITY OF.—Granting that the decision erroneously declared the sale in question valid, such error, not being jurisdictional, could have been corrected only by a regular appeal. Decisions, erroneous or not, become final after the period fixed by law.

APPEAL from a judgment of the Court of First Instance of Nueva Ecija. Pasicolan, J.

The facts are stated in the opinion of the Court.

Santos K. Maranon for the plaintiff-appellant.
Ignacio Lugtu for the defendants-appellees.

JUGO, *J.:*

This is an appeal from a final order of the Court of First Instance of Nueva Ecija, in which the appellant raises only questions of law. From said order, we gather the following facts, which are not disputed:

On September 21, 1921, Homestead Patent No. 3236 was issued to Pedro Daquis, plaintiff in Civil Case No. 1032 of said court, and appellant herein, covering lot No. 1662 of the Cadastral Survey of Muñoz, Nueva Ecija. This patent was filed and registered in the office of the Register of Deeds of said province, who, on November 6, 1921, issued to Pedro Daquis the corresponding Original Certificate of Title No. 1073.

On January 19, 1922, Daquis filed with the said court in the cadastral proceedings of Muñoz an answer in which he alleged that he had acquired said lot by virtue of the homestead patent above mentioned and prayed that same be adjudicated to him and his wife Feliciana Quiambao.

On March 9, 1922, Daquis filed another answer of the same tenor.

On September 6, 1926, Daquis, in an instrument acknowledged before Notary Public Ignacio Castelo, conveyed by way of absolute sale said lot to Maximo Bustos, defendant in said case and appellee herein, for the sum of ₱4,450.

On the next day, September 7, 1926, Bustos filed with the Court of First Instance of Nueva Ecija his cadastral answer claiming ownership of the lot in question by virtue of the purchase evidenced by said document, and prayed that the lot be adjudicated to him and his wife Elvira Buenaventura.

On the same day, Bustos, with the approval of Daquis, declared for tax purposes said property in his name by

means of an affidavit of transfer of real property of the same date.

On June 23, 1934, the Chief of the General Land Registration Office in Manila issued an order directing the Register of Deeds of Nueva Ecija to cancel Original Certificate of Title No. 1073, and in lieu thereof issue a new Transfer Certificate of Title to Maximo Bustos and Elvira Buenaventura, pursuant to the order of Judge Enrique V. Filamor of the Court of First Instance of Nueva Ecija, dated November 18, 1932, in the cadastral proceedings.

On June 30, 1934, Transfer Certificate of Title No. 8310 was issued by the Register of Deeds to the spouses Bustos and Buenaventura.

On September 24, 1952, Daquis filed a complaint with the Court of First Instance of Nueva Ecija, presided over by Judge L. Pasicolan, praying that the transferor's affidavit, dated September 7, 1926, and the Transfer Certificate of Title No. 8310 be canceled, and he, plaintiff, be declared the owner of said Lot No. 1662, and that the defendants, the spouses Bustos and Buenaventura, be sentenced to pay jointly and severally plaintiff Daquis the sum of ₱20,000 as damages, plus the costs of suit.

The defendants, Bustos and his wife, filed a motion to dismiss, based on the ground that the cause of action was barred by a prior judgment and by the statute of limitations.

The court of first instance dismissed the complaint. Daquis appealed to this Court, and in his brief makes the following assignment of errors:

"I

"The lower court erred in dismissing the complaint of the plaintiff-appellant on the ground that the present action is barred by a prior judgment.

"II

"The lower court erred in holding that the sale of lot No. 1662 covered by Homestead Patent No. 3236 and original certificate of Title No. 1073, which is now being assailed and impugned as null and void, was clearly settled in the cadastral case . . . and that the matter must now be regarded to all intents and purposes as *res adjudicata*.

"III

"The lower court erred in holding that in the determination of the conflicting claims to the land in question the court had no occasion or need to inquire into the validity of the first Title No. 1073, as the issue was not the indefeasibility of a Torrens Title acquired under the Homestead Patent."

The theory of the appellant is that, in the cadastral proceedings, the court of first instance could not nullify or cancel the certificate of title issued as a consequence of the homestead patent and order the issuance of a transfer certificate of title in favor of the Bustos spouses, for the reason that said certificate of title issued to the homestead patentee was just as indefeasible as any other Torrens Certificate of Title. The only defect of this theory is that the court did not order the cancellation or nullification of either the patent or the corresponding certificate of title, but based the issuance of the transfer certificate of title in favor of the Bustos spouses on the sale of the land made by Daquis to said spouses, as evidenced by the transferor's affidavit and the declaration in favor of the Bustos spouses made with the consent of Daquis. The court below, far from annulling the patent and the certificate of title of Daquis, impliedly but necessarily recognized them, for Daquis could not have sold the property to Bustos without possessing the patent and the Torrens Certificate of Title.

However, Daquis contends that said sale was made four years, eleven months, and fifteen days after the issuance of the patent and the certificate of title, or, in other words, fifteen days short before the expiration of the five-year period after the issuance, in violation of Section 116 of Act No. 2874, which reads as follows:

"Sec. 116. Land acquired under the free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period; but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations."

In the first place, the decision of Judge Filamor in favor of the Bustos spouses was rendered on November 18, 1932, but the complaint in the present case (Civil Case No. 1032 of the Court of First Instance of Nueva Ecija) was filed on November 24, 1952, or more than twenty years after the rendition of the decision of Judge Filamor. Needless to say, the decision of Judge Filamor had become final for more than nineteen years before the complaint seeking its annulment was filed.

Even assuming that Judge Filamor's decision erroneously declared the sale valid, such error, not being jurisdictional, could have been corrected only by a regular appeal. Decisions, erroneous or not, become final after the period fixed by law; litigations would be endless; no questions would be finally settled; and titles to property would become precarious if the losing party were allowed to reopen them at any time in the future.

In view of the foregoing, the order appealed from is affirmed, with costs against the appellant.

It is so ordered.

Parás, C. J., Pablo, Bengzon, Montemayor, Reyes, Bautista Angelo, Labrador, and *Concepcion, JJ.,* concur.

Order affirmed.

[No. L-6216. April 30, 1954]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellant, *vs.* AMANDO AUSTRIA, defendant and appellee

1. CRIMINAL PROCEDURE; INFORMATION.—Where the information is not merely defective but it does not charge any offense at all, technically speaking, that information does not exist in contemplation of law.
2. ID.; ID.; DOUBLE JEOPARDY.—If an information is dismissed and the accused discharged on a demurrer, or on petition of the fiscal or the accused, or on the court's own motion, because the information or complaint is either void or fatally defective, or what amounts to the same thing, when it does not charge the proper offense, such dismissal and the consequent discharge of the accused is not a bar to his prosecution for the same offense.
3. ID.; ID.; VOID INFORMATION CAN NOT BE VALIDATED BY PRESENTING EVIDENCE.—It is true that the motion to quash was interposed by counsel for the accused after the prosecution had presented its evidence and that a portion of that evidence tended to prove that the weapon for which the accused was prosecuted for illegal possession of firearm had been used in killing his victim in the homicide case, to which evidence, as the record shows, the accused, or his counsel, did not interpose any objection. This fact, however, cannot have the effect of validating a void information, or of proving an offense which does not legally exist.

APPEAL from an order of the Court of First Instance of Ilocos Norte. Flores, J.

The facts are stated in the opinion of the court.

Assistant Solicitor General Ruperto Kapunan, Jr. and *Solicitor Augusto M. Luciano* for the appellant.

Agripino Rabago for the appellee.

BAUTISTA ANGELO, *J.:*

Amando Austria was accused before the Court of First Instance of Ilocos Norte in two seperate informations, one of murder and the other of illegal possession of firearm. Because the weapon used by the accused in killing the deceased in the crime of murder is the same unlicensed firearm for which he was charged in the case for illegal possession of firearm, the two cases were tried jointly by agreement of the parties and with the approval of the court.

After the prosecution had presented its evidence, counsel for the defense filed an oral motion to dismiss the case for illegal possession of firearm on the ground that the facts alleged in the information do not constitute an offense, invoking in support thereof Republic Act No. 482 which exempts from criminal liability persons found in possession of unlicensed firearms unless they are used or carried in the person of the possessor. The court denied the motion. With this denial, trial was resumed with the defense presenting its evidence in both cases. And when the cases were submitted for decision, the court convicted the accused in the case of homicide but dismissed that for illegal possession of firearm on the ground that the information does not charge an offense under Republic Act No. 482.

Later, another information was filed against the accused also for illegal possession of firearm wherein it was alleged for the first time that the accused carried the firearm in his person and used it in killing one Alejo Austria. Counsel for the accused filed a written motion to quash this information pleading double jeopardy in his behalf. This motion was denied by Judge Jose P. Flores, then presiding the court but, on motion for reconsideration, Judge Antonio Belmonte, who took over the court, sustained the motion to quash and dismissed the case on the ground that if it be continued it would place the accused in double jeopardy. Not satisfied with this order, the fiscal took the present appeal.

The issue posed in this appeal is: Is the dismissal of the information filed in the first case for illegal possession of firearm against the accused a bar to a subsequent prosecution for the same offense?

It should be noted that the court dismissed the first case for illegal possession of firearm upon the sole ground that the information did not contain facts sufficient to constitute an offense. Bear in mind that that information was filed in connection with Republic Act No. 482 which exempts from criminal liability persons found in possession of unlicensed firearms unless the firearm is used or carried in his person by the possessor. And we already held in a recent case that in order that an information under that Act may be deemed sufficient it must allege that the accused was using the unlicensed firearm or carrying it in his person at the time he was caught by the authorities with the unlicensed weapon (People *vs.* Santos Lopez y Jacinto, G. R. No. L–1603, November 29, 1947). And these essential allegations not having been averred in the information, the court rightly dismissed the case on the ground that the information did not allege facts sufficient to constitute an offense.

With this background, it is evident that the plea of double jeopardy cannot be entertained either under our rules or under our jurisprudence. Thus, section 9, Rule 113, expressly provides that the dismissal of a case against the defendant can only be considered as a bar to another prosecution for the same offense when the case against him is dismissed "upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction." And elaborating on the scope of this provision, we find the following rulings: As a general rule, one is not put in jeopardy if the information under which he is tried is entirely void because it charges no offense at all known to law. (16 C. J. sec. 379, p. 243; U. S. *vs.* Balmori, 1 Phil., 660.) Accordingly, if an information is dismissed and the accused discharged on a demurrer, or on petition of the fiscal or the accused, or on the court's own motion because the information or complaint is either void or fatally defective, or what amounts to the same thing, when it does not charge the proper offense, such dismissal and the consequent discharge of the accused is not a bar to his prosecution for the same offense. (U. S. *vs.* Montiel, 7 Phil., 272; People *vs.* Nargatan, 48 Phil., 470; People *vs.* Mirasol, 43 Phil., 860; 16 C. J., pp. 241–6; Hopt. *vs.* Utah, 104 U. S., 631; Murphy *vs.* Massachusetts, 177 U.S., 155; U. S. *vs.* Openheimer, 24 U. S., 85, 61 Law Ed. 161.)

It is true that the motion to quash was interposed by counsel for the accused after the prosecution had presented its evidence and that a portion of that evidence tended to prove that the weapon for which the accused was prosecuted for illegal possession of firearm had been used in killing his victim in the homicide case, to which evidence, as the record shows, the accused, or his counsel, did not interpose any objection. This fact, however, cannot have the effect of validating a void information, or of proving an offense which does not legally exist. Such is the situation that obtains in the present case. The information was not merely defective but it does not charge any offense at all. Technically speaking, that information does not exist in contemplation of law.

We are not unmindful of the doctrine laid down in the cases of Serra *vs.* Mortiga, 11 Phil., 762, U. S. *vs.* Estraña, 16 Phil., 520, and United States *vs.* Destrito and De Ocampo, 23 Phil., 28, cited with approval in the case of People *vs.* Abad Santos, 76 Phil., 744, wherein this court held that "Any defect in the accusation other than that of lack of jurisdiction over the subject matter may be cured by good and sufficient evidence introduced by the prosecution, and admitted by the trial court, without any objection on the part of the defense, and the accused may be legally con-

victed of the crime or offense intended to be charged and so established by the evidence." But this doctrine does not apply to our case because we are concerned here with an information which charges no offense at all, and not with one which is merely defective.

The present case should be likened to one where, "When the offense *proved* is more serious than, include, the offense charged, as when the offense charged is less serious physical injuries and the offense *proved* is serious physical injuries the accused may be convicted of the former but not of the latter offense of which he has not been informed." (U. S. *vs.* de Guzman, 8 Phil., 21), or to the rule which requires that "a qualifying circumstance which constitutes one of the essential elements of the offense like *alevosia* in murder *should be pleaded,* otherwise it should be considered merely as an aggravating circumstance *if proved* (U. S. *vs.* Campo, 23 Phil., 368). The philosophy behind this ruling is that an accused cannot be convicted of a charge of which he has not been informed.

Wherefore, the order appealed from is set aside, and the case is remanded to the lower court for further proceedings, without costs.

Pablo, Bengzon, Jugo, and *Concepcion, JJ.,* concur.

Reyes, J., concurs in the result.

PARÁS, *C. J.,* with whom concur Montemayor, J., dissenting:

The defendant-appellee was charged in the Court of First Instance of Ilocos Norte with the crime of illegal possession of firearm under Republic Act No. 482, in an information which failed to allege that the firearm was used by or carried in the person of the appellee. After the prosecution had presented its evidence tending to show that the firearm had been used by the appellee in killing one Alejo Austria, to which evidence the appellee or his counsel did not interpose any objection, a motion to quash was filed on the ground that the information did not contain facts sufficient to constitute an offense, in that it failed to allege that the firearm was used or carried by the appellee. This motion was denied and the defense accordingly presented its evidence. The court thereafter rendered a decision dismissing the information for the reason that it did not charge an offense under Republic Act No. 482.

Subsequently another information was filed against the appellee for the same illegal possession of firearm, it being now alleged that he carried said firearm in his person and used it in killing Alejo Austria. Counsel for the appellee filed a written motion to quash, based on double jeopardy. This was denied by the then presiding Judge Jose P. Flores but, on motion for reconsideration, the next presiding Judge, Antonio Belmonte, sustained the motion and dis-

missed the case on the ground invoked by the appellee. The fiscal has appealed.

I am of the considered opinion that the appealed order is correct. The information in the first case was valid, although fatally defective for failing to allege an essential element of the crime of illegal possession of firearm; but as said fatal defect was supplied by necessary evidence during the trial, without objection on the part of the defense, the court below could have rendered a judgment of conviction against the appellee. As already held in People *vs.* Abad Santos, 76 Phil., 744, "any defect in the accusation other than that of lack of jurisdiction over the subject matter may be cured by good and sufficient evidence introduced by the prosecution, and admitted by the trial court, without any objection on the part of the defense, and the accused may be legally convicted of the crime or offense intended to be charged and so established by the evidence." This Court cited with approval the decision in U. S. *vs.* Estraña, 16 Phil., 520, in which the accused was prosecuted for the crime of perjury in an information which failed to allege that the false testimony involved was material, this allegation being an essential element of the crime of perjury under section 3 of Act No. 1687; but as no objection to the sufficiency of the complaint was raised during the trial, this Court held that the fatal defect could have been supplied by competent testimony. To quote:

> "The complaint in the case at bar is fatally defective for the want of an allegation that the testimony, alleged to be false, was material to the issues involved in the murder case. Our statute (section 3 of Act No. 1687, *supra*) specifically makes materiality an essential element of the crime of perjury and without this the crime can not legally exist. As no objection to the sufficiency of the complaint was raised this fatal defect could have been supplied by competent testimony on the trial. (United States *vs.* Estraña, 16 Phil., 520, 529.)

The case at bar is on all fours with the case of U. S. *vs.* Estraña, in that in both cases the information failed to allege an essential element of the offenses respectively charged therein: in the first, that the appellee carried or used the firearm; and in the second, that the alleged false testimony was material.

I vote, therefore, for the dismissal of the appeal.

LABRADOR, *J.:*

I concur in the dissent of Chief Justice Parás. The grounds upon which the majority decision are based are too technical to subserve the ends of justice.

Order set aside.

[No. L-6134. April 23, 1954]

RUBEN VALERO and ESTRELLA A. DE VALERO, petitioners, *vs.* ISABEL FOLLANTE, respondent

PUBLIC SERVICE COMMISSION, NOT BOUND BY TECHNICAL RULES OF LEGAL EVIDENCE; POWER TO RECEIVE ADDITIONAL EVIDENCE TO SUBSTANTIATE THE NEW FACTS ALLEGED IN THE MOTION FOR RECONSIDERATION.—While the stand taken by one of the Commissioners is in line with ordinary rule of procedure, the same need not be strictly adhered to by the Public Service Commission, nor should the latter be strictly bound by it, for the law creating the Commission has invested it with ample power to conduct its hearings and investigations without being trammeled by the ordinary rules of court. So that, the Commission cannot be said to have acted improperly in receiving additional evidence to substantiate the new facts alleged in the motion for reconsideration if in its opinion such evidence is necessary to enable it to reach an enlightened decision of the controversy.

APPEAL from a decision of the Public Service Commission.

The facts are stated in the opinion of the court.

Manuel O. Chan for the oppositors and petitioners.
Crisostomo F. Pariñas for the applicant and respondent.

BAUTISTA ANGELO, *J.:*

On July 25, 1951, Isabel Follante filed with the Public Service Commission a petition to operate an ice plant in the municipality of Candon, Province of Ilocos Sur and its environments. Ruben Valero and Estrella A. de Valero filed an opposition alleging, among other things, that the Public Service Commission has already granted the oppositors authority to operate an ice plant with 5-ton daily capacity in the municipality of San Fernando, La Union, with right to sell ice in the municipalities of San Juan, San Gabriel, Bacnotan, Balaoan, Luna, Bangar and Sudipen, all in the province of La Union, and in the municipalities of Tagudin, Sevilla, Sta. Cruz, Sta. Lucia, Candon, Santiago, San Esteban, Sta. Maria and Narvacan, all in the Province of Ilocos Sur. They also alleged that the service they were rendering in the territory covered by their authority was adequate and satisfactory and that public convenience and necessity did not require the operation of another ice plant in the municipality of Candon and its environs. They finally alleged that to grant the petition would only promote unfair and ruinous competition and that petitioner was not financially capable of maintaining an adequate and sufficient operation of a new ice plant as set forth in her petition.

The petition was heard in due time and a decision was rendered on December 27, 1951 granting to petitioner the authority applied for. Both on motion for reconsideration,

and after a rehearing was held, the Public Service Commission set aside its former decision and revoked the authority granted to petitioner in an order issued on June 3, 1952. The petitioner filed a motion for reconsideration, and without any further hearing, another order was issued as follows: Commissioner Paredes voted to deny the motion and to reaffirm the order issued on June 3, 1952. But Commissioners Ocampo and Prieto voted to grant the motion and to reaffirm the original decision rendered on December 27, 1951. The oppositors moved to have this order reconsidered, but their motion was denied. Hence, this petition for review.

It should be recalled that the petition for authority to operate an ice plant in the municipality of Candon, Province of Ilocos Sur, and its environs, was originally granted in a decision rendered on December 27, 1951, but on motion for reconsideration, said decision was set aside in an order issued on June 3, 1952. It should be noted that, in connection with said motion for reconsideration, the Commission granted the parties an opportunity to present additional evidence to substantiate the new facts alleged in the motion for reconsideration. And in connection with the new evidence presented, the Commission made the following findings of fact:

"The Commission has carefully gone over the additional evidence presented as well as the evidence adduced during the original hearing, and finds that the fact has been established that the applicant is not financially capable of operating the ice plant applied for, and that she is but a mere dummy of a Chinaman by the name of Tan Tai *alias* Noo Wah, the owner of a restaurant in Candon, Ilocos Sur, and husband of Cresencia Follante, a very close relative of the applicant. The commission also finds that, with respect to her financial capacity, applicant misrepresented the facts to this Commission as evidenced by her statement to the effect, calculated, no doubt, to impress the Commission regarding her solvency, that she had deposited P35,000 in the Philippine National Bank branch in Vigan, Ilocos Sur, prior to the date of the original hearing, when the truth is, as admitted by her during the hearing on the motion for reconsideration, that no such amount was ever deposited. The Commission is not disposed to believe the statements made by this applicant during the rehearing, that she pledged and mortgaged personal and real property in order to raise funds for the operation of the ice plant applied for, as this is in direct conflict with her previous testimony to the effect that she had already in her possession P35,000 ready for the use and for the purchase of the necessary equipment to install and operate the ice plant in question. The financial ability of an applicant to operate a public utility is one of the most important considerations that should be taken into account in the approval or denial of an application to engage in such operation.

"In view of the above, particularly of the fact that applicant is a mere dummy of an alien who has tried to circumvent the provisions of the Public Service Act as well as of the Constitution of the Philippines, the Commission finds it its duty to revoke the decision sought to be reconsidered and to set the same aside."

Note also that the above order was written by Commissioner Paredes and was concurred in by Commissioner Prieto. Commissioner Ocampo was then on leave. Later, however, petitioner filed a motion for reconsideration, and on the strength of the same evidence, and without any further hearing, Commissioner Paredes, who received the additional evidence, and penned the order, issued an order on August 21, 1952, reiterating his previous findings and denying the motion; but this time Commissioner Ocampo dissented, and his dissenting opinion was concurred in by Commissioner Prieto. Since their dissenting opinions carried two negative votes, they became the opinion of the majority. This is the opinion which is now being impugned by the oppositors in the present petition for review.

The reasons expressed by Commissioner Ocampo in his dissenting opinion are as follows:

> "The order revoking the decision which granted to the applicant a certificate of public convenience is based on the additional evidence which oppositors produced during the rehearing. This evidence consists of the testimony of Ruben L. Valero, one of the oppositors but said evidence does not provide a sufficient basis for the revocation of the certificate granted to the applicant. This evidence purports to prove that applicant is a dummy of a Chinese national and that she is not financially qualified to install and operate the plant. The testimony of Valero on these points is clearly hearsay and at times even double hearsay—told to Valero by someone to whom it was told. There is no reliable direct evidence proving these allegations of financial incapacity or that applicant is a mere dummy. On the other hand there is the rebuttal evidence of applicant that she had accumulated about ₱20,000 which is the money she used to install her plant and we do not see that this testimony is in any way unbelievable."

As already stated, Commissioner Prieto concurred in the dissenting opinion of Commissioner Ocampo, but apparently his reasons for dissenting are based on a matter of procedure more than on the reasons set forth by Commissioner Ocampo in his dissenting opinion. Commissioner Prieto expressed the opinion that the oppositors should not have been allowed to present evidence on the lack of financial capacity of the applicant and on the fact that she was a mere dummy of a Chinaman who was the real party behind her application for the simple reason that those are new facts which were not alleged either in the written opposition, or in the motion for reconsideration filed by oppositors, and because of this transgression of an important rule of procedure, he believed that those new facts cannot serve as basis for setting aside the original decision rendered on December 27, 1951. It would seem therefore that Commissioner Prieto is of the opinion that the findings made by Commissioner Paredes in his order of June 3, 1952, which was concurred in by him, to the effect that petitioner was not financially capable and was a mere dummy of a Chinaman are correct, but that the reason for

reversing his previous stand is that those facts cannot be taken into account because they are not among the issues raised in the pleadings filed by the oppositors. We may therefore say that, in substance, these findings bear the approval and support of the vote of two commissioners.

As regards the matter of procedure brought out by Commissioner Prieto, we may say that, while the stand he has taken is in line with ordinary rule of procedure, the same need not be strictly adhered to by the Commission, nor should the latter be strictly bound by it, for the law creating the Commission has invested it with ample power to conduct its hearings and investigations without being trammeled by the ordinary rules of court. Thus, Section 29 of the Public Service Act provides that "All hearings and investigations before the Commission shall be governed by the rules adopted by the Commission, and in the conduct thereof the Commission shall not be bound by the technical rules of legal evidence." The only thing required is that the parties be given proper notice and hearing in accordance with the rules (section 16), except in cases where the Commission can act without previous hearing (section 17). So that, in our opinion, the Commission can not be said to have acted improperly in receiving the additional evidence if in its opinion such evidence is necessary to enable it to reach an enlightened decision of the controversy. And having reached this conclusion, we are of the opinion that the real decision of the Commission on the merits is that rendered on June 3, 1952 which bears the affirmative vote of two commissioners.

Wherefore, the dissenting opinions of Commissioners Ocampo and Prieto dated August 28, 1952 are hereby set aside and the decision of Commissioners Paredes and Prieto dated June 3, 1952 is hereby maintained, as reaffirmed in the order of Commissioner Paredes dated August 21, 1952, without pronouncement as to costs.

Pablo, Bengzon, Reyes, Jugo, Labrador, Concepcion, and *Diokno, JJ.*, concur.

Dissenting opinions of Commissioners Ocampo and Prieto set aside and decision of Commissioners Paredes and Prieto dated June 3, 1952 is maintained, as reaffirmed in the order of Commissioner Paredes dated August 21, 1952.

[No. L-6339. April 20, 1954]

MANUEL LARA ET AL., plaintiffs and appellants, *vs.* PETRONILO DEL ROSARIO, JR., defendant and appellee

1. EMPLOYER AND EMPLOYEE; WAGES; EMPLOYEE WITH NO FIXED SALARY NOT ENTITLED TO EXTRA COMPENSATION FOR OVERTIME WORK.—Where the plaintiffs as chauffeurs received no fixed salary, wages or remuneration but receiving as compensation

from their employer an uncertain and variable amount depending upon the work done or the result of said work (piece work) irrespective of the amount of time employed, they are not covered by the Eight Hour Labor Law and are not entitled to extra compensation should they work in excess of eight hours a day.

2. ID.; ID.; EMPLOYEES NOT ENTITLED TO "MESADA".—Granting that article 302 of the Code of Commerce is still in force, it refers to employees who are engaged under salary basis, "and not to those who only receive compensation equivalent to whatever service they may render."

APPEAL from a decision of the Court of First Instance of Manila. Ocampo, J.

The facts are stated in the opinion of the court.

Manansala & Manansala for the appellants.

Oscar S. Aguilar and *Ramon L. Resurreccion* for the appellee.

MONTEMAYOR, *J.:*

In 1950 defendant Petronilo del Rosario, Jr., owner of twenty-five taxi cabs or cars, operated a taxi business under the name of "Waval Taxi." He employed among others three mechanics and 49 chauffeurs or drivers, the latter having worked for periods ranging from 2 to 37 months. On September 4, 1950, without giving said mechanics and chauffeurs 30 days advance notice, Del Rosario sold his 25 units or cabs to La Mallorca, a transportation company, as a result of which, according to the mechanics and chauffeurs above-mentioned they lost their jobs because the La Mallorca failed to continue them in their employment. They brought this action against Del Rosario to recover compensation for overtime work rendered beyond eight hours and on Sundays and legal holidays, and one month salary (mesada) provided for in article 302 of the Code of Commerce because of the failure of their former employer to give them one month notice. Subsequently, the three mechanics unconditionally withdrew their claims. So, only the 49 drivers remained as plaintiffs. The defendant filed a motion for the dismissal of the complaint on the ground that it stated no cause of action and the trial court for the time being denied the motion saying that it will considered when the case was heard on the merits. After trial the complaint was dismissed. Plaintiffs appealed from the order of dismissal to the Court of Appeals which Tribunal after finding that only questions of law are involved, certified the case to us.

The parties are agreed that the plaintiffs as chauffeurs received no fixed compensation based on the hours or the period or time that they worked. Rather, they were paid on the commission basis, that is to say, each driver received 20 per cent of the gross returns or earnings from the ope-

ration of his taxi cab. Plaintiffs claim that as a rule, each driver operated a taxi 12 hours a day with gross earnings raging from ₱20 to ₱25, receiving therefrom the corresponding 20 per cent share ranging from ₱4 to ₱5, and that in some cases, especially during Saturdays, Sundays and holidays when a driver worked 24 hours a day he grossed from ₱40 to ₱50, thereby receiving a share of from ₱8 to ₱10 for the period of twenty-four hours.

The reasons given by the trial court in dismissing the complaint is that the defendant being engaged in the taxi or transportation business which is a public utility, came under the exception provided by the Eight Hour Labor Law (Commonwealth Act No. 444); and because plaintiffs did not work on a salary basis, that is to say, they had no fixed or regular salary or remuneration other than the 20 per cent of their gross earnings, "their situation was therefore practically similar to piece workers and hence, outside the ambit of article 302 of the Code of Commerce."

For purposes of reference we are reproducing the pertinent provisions of the Eight Hour Labor Law, namely, sections 1 to 4.

"SECTION 1. The legal working day for any person employed by another shall not be more than eight hours daily. When the work is not continuous, the time during which the laborer is not working and can leave his working place and can rest completely shall not be counted.

"SEC. 2. This Act shall apply to all persons employed in any industry or occupation, whether public or private, with the exception of farm laborers, laborers who prefer to be paid on piece work basis, domestic servants and persons in the personal service of another and members of the family of the employer working for him.

"SEC. 3. Work may be performed beyond eight hours a day in case of actual or impending emergencies, caused by serious accidents, fire, flood, typhoon, earthquakes, epidemic, or other disaster or calamity in order to prevent loss of life and property or imminent danger to public safety; or in case of urgent work to be performed on the machines, equipment, or installations in order to avoid a serious loss which the employer would otherwise suffer, or some other just cause of a similar nature; but in all cases the laborers and employees shall be entitled to receive compensation for the overtime work performed at the same rate as their regular wages or salary, plus at least twenty-five per centum additional.

"In case of national emergency the Government is empowered to establish rules and regulations for the operation of the plants and factories and to determine the wages to be paid the laborers.

"SEC. 4. No person, firm, or corporation, business establishment or place or center of labor shall compel an employee or laborer to work during Sundays and legal holidays, unless he is paid an additional sum of at least twenty-five per centum of his regular remuneration: *Provided however*, That this prohibition shall not apply to public utilities performing some public service such as supplying gas, electricity, power, water, or providing means of transportation or communication."

Under section 4, as a public utility, the defendant could have his chauffeurs work on Sundays and legal holidays without

paying them an additional sum of at least 25 per cent of their regular remuneration: but that, with reference only to work performed on Sundays and holidays. If the work done on such days exceeds 8 hours a day, then the Eight Hour Labor Law would operate, provided of course that plaintiffs came under section 2 of the said law. So that the question to be decided here is whether or not plaintiffs are entitled to extra compensation for work performed in excess of 8 hours a day, Sundays and holidays included.

It will be noticed that the last part of section 3 of Commonwealth Act 444 provides for extra compensation for over-time work "at the same rate as their *regular wages or salary*, plus at least twenty-five per centum additional," and that section 2 of the same act excludes from the application thereof laborers who preferred to be on *piece work basis*. This connotes that a laborer or employee with no fixed salary, wages or remuneration but receiving as compensation from his employer an uncertain and variable amount depending upon the work done or the result of said work (piece work) irrespective of the amount of time employed, is not covered by the Eight Hour Labor Law and is not entitled to extra compensation should he work in excess of 8 hours a day. And this seems to be the condition of employment of the plaintiffs. A driver in the taxi business of the defendant, like the plaintiffs, in one day could operate his taxi cab eight hours, or less than eight hours or in excess of 8 hours, or even for 24 hours on Saturdays, Sundays and holidays, with no limit or restriction other than his desire, inclination and state of health and physical endurance. He could drive continuously or intermittently, systematically or haphazardly, fast or slow, etc. depending upon his exclusive wish or inclination. One day when he feels strong, active and enthusiastic he works long, continuously, with diligence and industry and makes considerable gross returns and receives much as his 20 per cent commission. Another day when he feels despondent, run down, weak or lazy and wants to rest between trips and works for a less number of hours, his gross returns are less and so is his commission. In other words, his compensation for the day depends upon the result of his work, which in turn depends on the amount of industry, intelligence and experience applied to it, rather than the period of time employed. In short, he has no fixed salary or wages. In this we agree with the learned trial court presided by Judge Felicisimo Ocampo which makes the following findings and observations on this point.

"* * * As already stated, their earnings were in the form of commission based on the gross receipts of the day. Their participation in most cases depended upon their own industry. So much so that the more hours they stay on the road, the greater the gross returns and the higher their commissions. They have no fixed hours of labor.

They can retire at pleasure, they not being paid a fixed salary on the hourly, daily, weekly or monthly basis.

"It results that the working hours of the plaintiffs as taxi drivers were entirely characterized by its irregularity, as distinguished from the specific regular remuneration predicated on specific and regular hours of work of factors and commercial employees.

"In the case of the plaintiffs, it is the result of their labor, not the labor itself, which determines their commissions. They worked under no compulsion of turning a fixed income for each given day. * * *."

In an opinion dated July 1, 1939 (Opinion No. 115) modified by Opinion No. 22, series 1940, dated January 11, 1940, the Secretary of Justice held that chauffeurs of the Manila Yellow Taxicab Co. who "observed in a loose way certain working hours daily," and "the time they report for work as well as the time they leave work was left to their discretion," receiving no fixed salary but only 20 per cent of their gross earnings, may be considered as piece workers and therefore not covered by the provisions of the Eight Hour Labor Law.

The Wage Administration Service of the Department of Labor in its Interpretative Bulletin No. 2 dated May 28, 1952, under "Overtime Compensation", in section 3 thereof entitled Coverage, says:

"The provisions of this bulletin on *overtime compensation* shall apply to all persons employed in any industry or occupation, whether public or private, with the *exception* of farm laborers, non-agricultural laborers or employees who are paid on piece work, contract, pakiao, task or *commission basis*, domestic servants and persons in the personal service of another and members of the family of the employer working for him."

From all this, to us it is clear that the claim of plaintiffs-appellants for overtime compensation under the Eight Hour Labor Law has no valid support.

As to the month pay (mesada) under article 302 of the Code of Commerce, article 2270 of the new Civil Code (Republic Act 386) appears to have repealed said Article 302 when it repealed the provisions of the Code of Commerce governing Agency. This repeal took place on August 30, 1950, when the new Civil Code went into effect, that is, one year after its publication in the Official Gazette. The alleged termination of services of the plaintiffs by the defendant took place according to the complaint on September 4, 1950, that is to say, after the repeal of Article 302 which they invoke. Morever, said Article 302 of the Code of Commerce, assuming that it were still in force, speaks of "salary corresponding to said month," commonly known as "mesada". If the plaintiffs herein had no fixed salary either by the day, week or the month, then computation of the month's salary payable would be impossible. Article 302 refers to employees recieving a fixed salary. Dr. Arturo M. Tolentino in his book entitled "Commentaries

and Jurisprudence on the Commercial Laws of the Philippines," Vol. 1, 4th edition, p. 160, says that article 302 is not applicable to employees without fixed salary. We quote—

"*Employees not entitled to indemnity.*—This article refers only to those who are engaged under salary basis, and not to those who only receive compensation equivalent to whatever service they may render. (1) Malagarriga 314, citing decision of Argentina Court of Appeals on Commercial Matters.)"

In view of the foregoing, the order appealed from is hereby affirmed, with costs against appellants.

Pablo, Bengzon, Padilla, Reyes, Jugo, Bautista Angelo, Labrador, Concepcion, and *Diokno, JJ.,* concur.

Parás, C. J., concurs in the result.

Order affirmed.

[No. L-6307. April 20, 1954]

FELICIANO MANALANG and MACARIA CATACUTAN, plaintiffs and appellants, *vs.* GERCIA CANLAS, ANACLETA CANLAS, URBANA CANLAS, PILAR CANLAS, CARLOS CANLAS, and the minors TRANQUILINO CANLAS, JESUS CANLAS, and SANTO CANLAS through their guardian *ad litem* ANACLETA CANLAS, defendants and appellees.

ACTIONS, PRESCRIPTION OF.—An action to compel a trustee to convey the property registered in his name in trust for the benefit of the *cestui que trust,* does not prescribe.

APPEAL from an order of the Court of First Instance of Pampanga.

The facts are stated in the opinion of the court.

Francisco M. Ramos for the appellants.

Artemio C. Macalino and *Porfirio C. Punsalan* for the appellees.

LABRADOR, *J.:*

This is an appeal from an order of the Court of First Instance of Pampanga dismissing the complaint filed in the above-entitled case. The case was forwarded to this court by the Court of Appeals on the ground that only questions of law are involved in the appeal.

The complaint alleges that on May 24, 1919, plaintiffs purchased a certain parcel of land in San Fernando, Pampanga, from Juan Canlas, and that on that date Canlas executed a deed of sale of the property in favor of the plaintiffs; that the said land became known as Lot No. 2981 of the cadastral survey of San Fernando, Pampanga, and in the cadastral proceedings it was adjudicated in favor of Canlas; that upon the registration of the land Canlas agreed and promised that he would deliver to the plain-

tiffs the owner's copy of the certificate of title to the property once the same is issued in his name, but he died before the certificate of title could be issued; that Canlas delivered the property to the plaintiffs at the time of the sale on May 24, 1919, and that they have been in possession thereof since then; that Canlas is survived by his children and widow, the defendants; that the title (Original Transfer Certificate of Title No. 4680) was issued in the name of Canlas, and when the defendants got possession of it, they discovered that it referred to the land that long ago had been sold and transferred by Canlas to the plaintiffs, so the defendants delivered the title to the plaintiffs; that the deed of sale executed by Canlas in favor of the plaintiffs can not be registered, because it is a private document in Pampango; and that the defendants refuse to make the proper registerable deed of confirmation to enable the plaintiffs to be substituted as owners of the property covered by the certificate of title.

Upon being summoned, the defendants presented a motion to dismiss the complaint, alleging that the action has prescribed, because more than ten years had elapsed since the execution of the original deed of sale on May 24, 1919, and because the alleged sale was executed prior to the issuance of the decree of registration. The Court of First Instance of Pampanga sustained the motion. It held that as the deed of sale, Exhibit A, was executed before the issuance of Certificate of Title No. 4680, the action thereon prescribed after the lapse of ten years, because the action is to recover ownership of real property, which must be brought within ten years after the cause of action accrued; and that under the Land Registration Act the action has also prescribed, because the same was filed beyond the one-year period from the issuance of the decree.

The action brought by the plaintiffs is clearly an action for the specific conveyance of the property registered in the name of defendants' predecessor in interest. The deceased vendor was issued the certificate of title for and in behalf, and in trust for the benefit, of the plaintiffs. The action is one to compel a trustee to convey the property registered in his name in trust for the benefit of the *cestui que trust*, and the same does not prescribe. (Cristobal *vs.* Gomez, 50 Phil., 810; Salinas *vs.* Tuason, 55 Phil., 729; Castro *vs.* Castro, 57 Phil., 675.)

The order of dismissal should be, as it is hereby, reversed, and the case remanded to the court *a quo* for further proceedings.

Parás, C. J., Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, Concepcion, and *Diokno, JJ.*, concur.

Order of dismissal reversed.

[No. L-6089. April 20, 1954]

VICENTE YLANAN, plaintiff and appellee, *vs* AQUILINO O. MERCADO, defendant and appellant

PLEADING AND PRACTICE; MOTION FOR RECONSIDERATION; WHEN NOT "PRO FORMA"; EFFECT ON THE PERIOD FOR PERFECTING AN APPEAL.—Where the motion for reconsideration was based on the claim that the finding of the trial court as to the authenticity of the disputed signature was not justified by the evidence submitted, which is the testimony of the expert witness denying such authenticity, the motion points out why the finding of the court is not justified by the evidence, and is clearly not a *pro forma* motion for new trial or reconsideration. Such motion for reconsideration suspends the period for perfecting an appeal.

APPEAL from an order of the Court of First Instance of Cebu. Varela, *J.*

The facts are stated in the opinion of the court.

Salvadora A. Logroño for the appellant.
Pablo Alegre for the appellee.

LABRADOR, *J.:*

This is an appeal from an order of the Court of First Instance of Cebu dismissing the above-entitled case, which had been appealed to said court from the municipal court of Cebu City. The appeal was certified to this Court by the Court of Appeals on the ground that only questions of law are raised in the appeal.

The action brought in the Municipal Court of Cebu City seeks to recover from the defendant the sum of ₱180.50, the balance of the value of furniture and other goods sold and delivered by the plaintiff to the defendant. The main issue of fact involved in the trial was the authenticity of the signature of one Aquilino O. Mercado to Exhibit A. Judgment was entered in said court in favor of the plaintiff and against the defendant for the sum of ₱180.50 as prayed for in the complaint. The decision was rendered on November 18, 1949, and the defendant received notice thereof on November 21, 1949. On December 2, 1949, defendant presented a motion for the reconsideration of the decision, alleging that the same was not justified in view of the fact that the signature to Exhibit A is forged, according to the testimony of an expert witness. It was also alleged that for the sake of justice and equity the court should order the National Bureau of Investigation to examine the disputed signature in Exhibit A. This motion for reconsideration was denied, and the defendant appealed to the Court of First Instance. The appeal was perfected within fourteen days if the period of time taken by the court in deciding the motion for reconsideration is not taken into account. After the defendant had filed an answer in the Court of First

Instance, plaintiff moved to dismiss the appeal on the ground that it was filed beyond the period prescribed in the rules. In support thereof it was claimed that the motion for reconsideration filed in the municipal court was a *pro forma* motion, which did not suspend the period for perfecting the appeal. The Court of First Instance sustained the motion to dismiss the appeal, holding that the ground on which the motion for reconsideration is based is not one of those required for a motion for new trial under section 1 of Rule 37 of the Rules of Court.

The only question at issue in this Court is whether the motion for reconsideration filed in the municipal court is a *pro forma* motion. The question must be decided in the negative. The motion was based on the claim that the finding of the trial court as to the authenticity of the disputed signature to Exhibit A was not justified by the evidence submitted, which is the testimony of the expert witness denying such authenticity. This is a motion which points out why the finding of the court is not justified by the evidence, and is clearly not a *pro forma* motion for new trial or reconsideration. The Court of First Instance erred in holding that it did not suspend the period for perfecting the appeal.

The order of dismissal is hereby reversed, and the case is ordered remanded to the Court of First Instance for further proceedings.

Parás, C. J., Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, Concepcion, and *Diokno, JJ.*, concur.

Order reversed.

[No. L-6525. April 12, 1954]

MARTA BANCLOS DE ESPARAGOZA ET AL., petitioner, *vs.* BIENVENIDO TAN, ETC. ET AL., respondents

CERTIORARI; DENIAL OF DUE PROCESS CONSTITUTES ABUSE OF DISCRETION.—Where a written charge for contempt was filed against petitioners, but no copy thereof has been served on them, and their plea to be given an opportunity to answer the charge before any action is taken against them was disregarded, this action is tantamount to a denial of due process which may be considered as a grave abuse of discretion.

ORIGINAL ACTION in the Supreme Court. Certiorari with preliminary injunction.

The facts are stated in the opinion of the court.

Pio L. Pestano for petitioners.

Ricardo N. Agbunag for respondent Angela Fernandez.

BAUTISTA ANGELO, *J.:*

This is a petition for certiorari with preliminary injunction seeking to set aside certain orders of respondent Judge

which direct the immediate arrest of petitioners for their failure to appear to show cause why they should not be punished for contempt, and to set aside the decision rendered by the Court of Appeals dated November 17, 1952, sustaining and giving effect to the aforesaid orders.

The orders herein referred to had arisen in a case instituted in the Court of First Instance of Rizal by the Judge Advocate General of the Armed Forces of the Philippines against Marta Banclos de Esparagoza, et al., in connection with the disposition of the amount of $1,190.83 accruing to one Aniceto Esparagoza, deceased, as pay in arrears due the said deceased (Civil Case No. 877). The case was instituted in order that it may be determined who among the different claimants as heirs of the deceased is entitled to the amount in question. After due hearing, the court found that Marta Banclos, the widow, is the only person entitled to receive the benefits of the estate, and, accordingly, it ordered that the amount of $1,190.83 be paid to her. However, as the widow, and her lawyer, in a gesture of nobility, agreed to give one-half of said amount to the four illegitimate children of the deceased, the court also included in the decision an injunction that the widow deposit with the Philippine National Bank said one-half, or the sum of $595.41, in the name of the four minor children, in equal shares, to be disposed of in accordance with law.

Two months after the money was received by the widow as directed in the decision, Angela Fernandez, mother of the four minor children, demanded that the money be given to her instead of being deposited in the bank alleging as reason that if it be so deposited, she would encounter difficulties in withdrawing the money for the benefit of the children. The widow refused to agree to the request unless the mother secure from the court an order authorizing her to receive the money in line with her request. The mother failed to do so, nor was she able to disclose the whereabouts of the children, and instead the widow came to know that the children were no longer living with their mother but had been given away to well-to-do couples who promised to bring them up and take care of them, and so, upon advice of Atty. Pio L. Pestaño, her counsel, the widow declined to give the money either to the mother or to the children. The result was that, on March 28, 1952, Angela Fernandez, the mother, instituted contempt proceedings against the herein petitioners in view of their failure to deliver the money as ordered by the court in its decision in Civil Case No. 877.

The petition for contempt was set for hearing, and after the widow and her counsel were duly heard, the court found the petition without merit, and denied the same. Six months thereafter, a similar petition for contempt was filed

by Angela Fernandez wherein she reiterated the same acts of dereliction of duty on the part of herein petitioners, copy of which was never served on the petitioners. However, the same was acted upon *ex parte* by the court who, on October 18, 1952, issued an order directing them to appear and show cause why they should not be punished for contempt for having disobeyed the order of the court. Copy of this order was served on petitioner Pestaño on October 22, 1952, and on October 25, the latter submitted to the court a written statement explaining the circumstances why he could not show cause as directed among which was the failure of the movant to serve on him a copy of the petition containing the charges for contempt. In said written manifestation, petitioner Pestaño made the special request that the order requiring his appearance be held in abeyance until after he shall have been served with copy of the petition for contempt as required by the rules, and that no action thereon be taken until after he shall have been given an opportunity to answer said motion. Instead of acceding to this request, the court, on October 25, 1952, issued an order directing his immediate arrest and that of his client Marta Banclos de Esparagoza. They sought to set aside order by bringing the matter to the Court of Appeals by way of certiorari, but their petition was dismissed for lack of merit.

The only issue to be determined is whether respondent Judge has exceeded his jurisdiction or acted with grave abuse of discretion in issuing his order of October 25, 1952, directing the immediate arrest of petitioners herein in view of their failure to appear and show cause why they should not be punished for contempt for having disobeyed the order of the court. The determination of this issue would depend upon an examination of the facts leading to the issuance of the disputed order.

It should be recalled that because of the refusal of Marta Banclos de Esparagoza, following the advice of her counsel and co-petitioner, Pio L. Pestaño, to deposit the money belonging to the four minor children with the Philippine National Bank, or to deliver it to their mother, Angela Fernandez, as demanded by the latter, Angela Fernandez filed a petition for contempt in the main case praying that the two be ordered to show cause why they should not be punished for contempt for their failure to obey the decision of the court. This petition was acted upon by the court *ex parte*, and because petitioners herein never received copy of the petition for contempt, they, submitted a written manifestation to the court praying that action thereon be held in abeyance and that they be not required to appear until after they shall have been given an opportunity to answer as required by the rules of court. This

special request was disregarded by the court and considering their failure to appear as a defiance, the court ordered their immediate arrest. Is this attitude of the court justifiable under this rules.

Section 3, Rule 64, of the Rules of Court provides:

"SEC. 3. *Contempt punished after charge and hearing.*—After charge in writing has been filed, and an opportunity given to the accused to be heard by himself or counsel, a person guilty of any of the following acts may be punished for contempt:

* * * * * * *

"(*b*) Disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or judge;

* * * * * * *

"But nothing in this section shall be so construed as to prevent the court from issuing process to bring the accused party into court, or from holding him in custody pending such proceedings."

As may be seen, a contempt proceeding as a rule is initiated by filing a charge in writing with the court, and after the charge is filed, an opportunity should be given the accused to be heard, by himself or counsel, before action could be taken against him. Here, it is true, a written charge was filed against petitioners, but no copy thereof has been served on them, nor have they been given an opportunity to be heard. The petitioners asked for this opportunity, but it was denied them. Instead, their arrest was immediately ordered. It is true that, under the same rule, "nothing * * * shall be so construed as to prevent the court from issuing process to bring the accused party into court, or from holding him in custody pending such proceedings", but such drastic step can only be taken if good reasons exist justifying it. Apparently, this reason does not exist. Petitioners not having received copy of the written charge, they asked that they be given one. They also asked that they be given an opportunity to answer said charge before action is taken against them. Both pleas were disregarded. Such action, in our opinion, is tantamount to a denial of due process, which may be considered as a grave abuse of discretion. As this court has aptly said: "Courts should be slow in jailing people for non-compliance with their orders. Only in cases of clear and contumacious refusal to obey should the power be exercised. A *bona fide* misunderstanding of the terms of the order or of the procedural rules should not immediately cause the institution of contempt proceedings." (Gamboa *vs.* Teodoro, L-4893, May 13, 1952.)

Wherefore, the orders of respondent Judge dated October 18, 1952 and October 25, 1952, are hereby set aside and it is hereby ordered that before action be taken on the mo-

tion for contempt, petitioners herein be given an opportunity to answer said motion as prayed for in their written explanation dated October 24, 1952, without costs.

Parás, C. J., Pablo, Bengzon, Montemayor, Reyes, Jugo, Labrador, Concepcion, and *Diokno, JJ.*, concur.

Orders set aside.

[No. L-5943. Abril 12, 1954]

GO SAN *alias* GO KING CHONG, recurrente y apelante, *contra* CELEDONIO AGRAVA, como Director de la Oficina de Patentes, y JOSE ONG LIAN BIO, recurridos y apelados.

1. PATENTES; SOLICITUD DE CANCELACIÓN DE UN PATENTE LIBRADO; JURISDICCIÓN DEL DIRECTOR DE LA OFICINA DE PATENTES.—El Director de la Oficina de Patentes tiene facultad para considerar la cancelación de patentes de diseños industriales que ha librado cuando se alega que no son nuevos y originales sino meras copias de los que el mocionante viene usando en los artículos que manufactura y que están tomados de catálogos impresos de manufactureros americanos de artículos idénticos.
2. ID.; ID.; LEY APLICABLE.—El artículo 28 de la Ley de la República No. 165 es aplicable a este caso, no sólo porque concierne al procedimiento de cancelación de patentes de diseños industriales indebidamente expedidos, sino también porque refleja la correcta interpretación del artículo 55 de la Ley, en el tiempo en que se presentó la petición de cancelación de patentes de diseños industriales, en relación con los artículos que lo preceden de la misma ley.
3. ID.; APELACIONES; PARTES.—No es necesaria la inclusión del Director de la Oficina de Patentes en una apelación contra una decisión u orden de dicha Oficina.

APELACIÓN contra una orden del Director de la Oficina de Patentes.

Los hechos aparecen relacionados en la decisión del Tribunal.

Sres. Allas y Castillo por el apelante.

Sres. Antonio Quirino y *Rafael R. Lasam* por el apelado Jose Ong Lian Bio.

El Procurador General Auxiliar Francisco Carreon y el Procurador Pacifico P. de Castro por el Director de la Oficina de Patentes.

DIOKNO, *M.:*

La cuestión legal que la apelación plantea es si el Director de la Oficina de Patentes tiene facultad para considerar la cancelación de patentes de diseños industriales que ha librado cuando se alega que no son nuevos y originales, sino meras copias de los que el mocionante viene usando en los artículos que manufactura y que están tomados de catálogos impresos de manufactureros americanos de artículos idénticos.

Se trata de unas franjas ornamentales en los bordes de maletines de viaje por las que el Director de Patentes concedió dos patentes de diseño industrial al recurrido José Ong Lian Bio, sin previa notificación pública o privada. Habiéndose enterado de las patentes a los tres meses de concedidas, el recurrente acudió al Director de Patentes pidiendo la cancelación de las mismas por los motivos arriba brevemente mencionados, pero, a moción del recurrido Ong, el Director sobreseyó la petición por creerse sin autoridad legal para considerarla. Contra esta resolución el recurrente apeló para ante esta Corte de conformidad con los artículos 61 al 66 de la Ley de la República No. 165.

La expedición de patentes de diseños industriales está regulada por el artículo 55 de la Ley citada, que dice así, según está enmendado:

"SEC. 55. *Design patents and patents for utility models.*—(a) Any new, original, and ornamental design for an article of manufacture and (b) any new model of implements or tools or of any industrial product, or of part of the same, which does not possess the quality of invention, but which is of practical utility by reason of its form, configuration, construction or composition, may be protected by the author thereof, the former by a patent for a design and the latter by a patent for a utility model, in the same manner subject to the same provisions and requirements as relate to patents for inventions in so far as they are applicable, except as otherwise herein provided.

"The standard of novelty established by section nine hereof for inventions shall apply to ornamental designs.

"A utility model shall not be considered 'new' if, before the application for a patent, it has been publicly known or publicly used in this country or has been described in a printed publication or publications circulated within the country, or if it is substantially similar to any other utility model so known, used or described within the country.

"Applications for design patents and patents for utility models shall be subject to interference proceedings as authorized in section ten of this Act, as amended by section one of Republic Act Numbered Six Hundred and thirty-seven.

"Patents for designs and for utility models shall be subject to compulsory license as authorized in section thirty-four of this Act. They shall not be subject to the payment of annual fees provided for invention patents in Chapter V hereof."—Republic Act No. 165, as amended by Republic Act No. 637 and further amended by Republic Act No. 864, section 1.

Y el artículo 28 de dicha ley, según está enmendado, dice:

"SEC. 28. *General grounds for cancellation.*—Any person may on payment of the required fee petition the Director within three years from the date of publication of the issue of the patent in the Official Gazette, to cancel the patent or any claim thereof, on any of the following grounds:

(*a*) That the invention is not new or patentable in accordance with sections seven, eight, and nine, or that the design or utility model is not new or patentable under section fifty-five thereof;

(*b*) That the specification in the case of an invention does not

comply with the requirement of section fourteen, Chapter III hereof; or

(c) That the person to whom the patent was issued was not the true and actual inventor, designer or author of the utility model or did not derive his rights from the true and actual inventor designer or author of the utility model."—Republic Act No. 165, as amended by Republic Act No. 864, section 2.

Este artículo es aplicable a este caso, no solo porque concierne al procedimiento de cancelación de patentes de diseños industriales indebidamente expedidos, sino también porque refleja la correcta interpretación del artículo 55 de la Ley, en el tiempo en que se presentó la petición de cancelación de patentes de diseños industriales, en relación con los artículos que le preceden de la misma ley.

En virtud de lo expuesto, se revoca la decisión apelada, y se devuelve el asunto para ulteriores trámites de acuerdo con la ley, con las costas al recurrente Ong en esta instancia. Descártese al Director de Patentes como parte recurrida en esta apelación.

Así se ordena.

Parás, C. J., Pablo, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador y *Concepcion, M.M.*, están conformes.

Se revoca la orden apelada.

[No. L-5257. April 4, 1954]

ARSENIO ALCARIN ET AL., plaintiffs and appellees, *vs.* FRANCISCO NAVARRO, defendant and appellant

1. APPEAL TO COURT OF FIRST INSTANCE; TERMINATION OF CASE WITHOUT A VALID TRIAL UPON THE MERITS; DETERMINING FACTOR FOR THE APPLICATION OF THE RULE.—What section 10 of Rule 40 considers as termination of a case without a valid trial upon the merits is a dismissal without trial and/or determination of any of the issues of fact raised in the pleadings. The existence of a trial on the merits is the determining factor for the application of the rule. Even if the case is decided on a question of law, i.e., lack of jurisdiction, provided there was a trial on the merits the case may not be remanded to the inferior court.
2. ID.; PURPOSE OF SECTION 10 OF RULE 40.—The evident purpose of the rule is to give opportunity to the inferior court to try the case first upon the merits, and only thereafter should the Court of First Instance be allowed to re-try the case, or to conduct another trial thereof on the merits.
3. ID.; WHAT CONSTITUTE VALID TRIAL UPON THE MERITS IN THE MUNICIPAL COURTS; DISPOSITION OF CASE UPON A QUESTION OF LAW.—The case was tried in the municipal court, and after the plaintiffs had closed their evidence, defendant-appellant filed a motion to dismiss, claiming that there is no contractual relation between him and the plaintiffs, and that as the plaintiffs have not shown that he had violated the provisions of Act 3959, he is not liable. The municipal court sustained the contention of the defendant and appellant that there is no evidence to prove the facts required in sections 1

and 2 of Act 3959, because it was not shown that defendant and appellant did not require his co-defendant who is the contractor to furnish the bond in an amount equivalent to the cost of labor, and that defendant and appellant had paid the said contractor the entire cost of labor without having been shown the affidavit that the latter had paid the wages of the plaintiffs. On appeal by the plaintiffs to the Court of First Instance there was no trial in that court; it only reviewed the record. Thereafter it rendered judgment finding the order of dismissal entered by the municipal court to be an error and reversing it, and remanding the case to said court for further proceedings under the authority of section 10, Rule 40, of the Rules of Court. (1) Was the action disposed of in the municipal court upon a question of law? and (2) Was there a valid trial upon the merits in the municipal court? *Held:* Even if the defendants did not present their evidence for the reason that the court found that the plaintiffs had failed to establish a cause of action, it does not mean thereby that the case was terminated on a question of law, and that there was no valid trial upon the merits. There was a valid trial, only that the court found that the trial was of no advantage to the plaintiffs, because they failed to prove the facts necessary to entitle them to recover. Whether the court rendered judgment for plaintiffs or absolved the defendant or denied the remedy to the plaintiffs, as the court has considered the evidence on the merits of the case, there was a valid trial on the merits within the meaning of section 10 of Rule 40 and the case may not be remanded for trial.

APPEAL from a judgment of the Court of First Instance of Cavite. Lucero, *J.*

The facts are stated in the opinion of the court.

Augusto de la Rosa for the appellant.

Roberto P. Angcog and *Atanacio A. Mardo* for the appellees.

LABRADOR, *J.:*

This action originated in the Municipal Court of Cavite City, where the plaintiffs-appellees filed an action against the defendants to recover from the latter the amounts which the plaintiffs, who are laborers, earned while working in the construction of the house of defendant Francisco Navarro from September, 1950, to October, 1950. The other defendant, Francisco Legaspi, was the building contractor employed by Navarro. Defendant Francisco Navarro alleges in his answer that he did not enter into a contract with the plaintiffs, nor did he authorize his co-defendant to employ them. As special defenses he asserts that the allegations of the complaint do not constitute a cause of action against him, and that the complaint is premature. The record fails to show whether defendant Francisco Legaspi filed an answer.

The case was tried in the municipal court, and after the plaintiffs had closed their evidence, the defendant Francisco Navarro filed a motion to dismiss, claiming that there

is no contractual relation between him and the plaintiffs, and that as the plaintiffs have not shown that he had violated the provisions of Act 3959, he is not liable. The municipal court sustained the contention of the defendant Francisco Navarro that there is no evidence to prove the facts required in sections 1 and 2 of Act 3959, because it was not shown that the defendant Francisco Navarro did not require the contractor Francisco Legaspi to furnish the bond in an amount equivalent to the cost of labor, and that Francisco Navarro had paid the contractor Legaspi the entire cost of labor without having been shown the affidavit that the contractor had paid the wages of the plaintiffs.

The plaintiffs appealed from this decision to the Court of First Instance of Cavite. There was no trial in that court; it only reviewed the record. Thereafter it rendered judgment finding the order of dismissal entered by the municipal court to be an error and reversing it, and remanding the case to said court for further proceedings under the authority of section 10, Rule 40, of the Rules of Court. In reversing the order of dismissal the court reasoned:

> * * *. From this discussion, this Court has reached the conclusion that under the proven facts of the case as shown by the plaintiffs' evidence, the order of dismissal rendered by the Municipal Judge of the City of Cavite is an error, and since the dismissal was prompted by a demurrer to the evidence defendant Francisco Navarro is precluded from introducing evidence in his defense when this case is remanded to the Municipal Court of Cavite City for further proceedings.

Against this order of remand, the defendants have filed an appeal directly to this court.

Section 10, Rule 40, of the Rules of Court, upon the authority of which the case was dismissed and remanded to the municipal court, provides as follows:

> Sec. 10. *Appellate powers of Courts of First Instance where action not tried on its merits by inferior courts.*—Where the action has been disposed of by an inferior court upon a question of law *and not after a valid trial upon the merits,* the Court of First Instance shall on appeal review the ruling of the inferior court and may affirm or reverse it, as the case may be. In case of reversal, the case shall be remanded for further proceedings. (Italics ours.)

The issues involved in this appeal, therefore, are: (1) Was the action disposed of in the municipal court upon a question of law? and (2) Was there a valid trial upon the merits in the municipal court, as defined in the above-quoted section? There is no question that there was a trial. That trial was held after issues of fact had been joined by the filing of an answer. And the case was not terminated solely on a question of law, because the court

found that the facts proved do not entitle the plaintiffs to recover. Moreover, the mere fact that the municipal court found that there was absence of allegations necessary to entitle the plaintiffs to recover, or evidence to establish said allegations of essential facts, does not mean that there was no valid trial upon the merits.

What section 10 of Rule 40 considers as termination of a case without a valid trial upon the merits is a dismissal without trial and/or determination of any of the issues of fact raised in the pleadings. Thus, if the hearing is had merely on the lack of jurisdiction or improper venue, without introduction of evidence on the merits, or on the issues of fact which entitle the plaintiff to recover or the defendant to be absolved from the action, there would not be a valid trial on the merits. As stated by Justice Moran, the said section is a restatement of the rulings laid down by the Supreme Court. He cites as example of the application of the rule a case where there is no trial in the inferior court and the case is disposed of upon a question of law, such as the lack of jurisdiction to try the case. In this instance, upon appeal to the Court of First Instance, the only question to be decided in the appeal is the jurisdiction of the inferior court, and if the Court of First Instance finds that the municipal court has jurisdiction, the case is remanded thereto for trial upon the merits, otherwise the dismissal is affirmed. Another example is where the inferior court sustains a motion to dismiss on the ground of failure of plaintiff's complaint to state a cause of action, in which case the appellate power of the Court of First Instance is to review the order of the inferior court sustaining the motion. And if the Court of First Instance finds the order to be wrong, the case has to be remanded to the inferior court for trial upon the merits. (I Moran, 1952 Rev. ed., pp. 889–890.)

It is pertinent to add, by way of clarification, that the existence of a trial on the merits is the determining factor for the application of the rule. Even if the case is decided on a question of law, i.e., lack of jurisdiction, provided there was a trial, the case may not be remanded to the inferior court.

In the case at bar, there was a trial upon the issue as to whether or not the plaintiffs should be entitled to recover. Even if the defendants did not present their evidence for the reason that the court found that the plaintiffs had failed to establish a cause of action, it does not mean thereby that the case was terminated on a question of law, and that there was no valid trial upon the merits. There was a valid trial, only that the court found that the trial was of no advantage to the plaintiffs, because they failed to

prove the facts necessary to entitle them to recover. The mere fact that the defendant did not present his evidence, because the court found it unnecessary, is no reason for holding that there was no valid trial at all. As the trial on the merits was held, no matter what the result thereof may have been, whether the court rendered judgment for plaintiff or absolved the defendant or denied the remedy to the plaintiff, as the court has considered the evidence on the merits of the case, there was a valid trial on the merits within the meaning of section 10, Rule 40, of the Rules of Court, and the case may not be remanded for trial.

It will be noted that the purpose of section 10 of Rule 40 is to prohibit the trial of a case originating from an inferior court by the Court of First Instance on appeal, without the said inferior court having previously tried the case on the merits. If there was no such trial on the merits, the trial in the Court of First Instance is premature, because the trial therein on appeal is a trial *de novo*, a new trial. There can not be a new trial unless a trial was already held in the court below. It might happen that after the trial on the merits in the lower court the parties may be satisfied with its judgment. So the evident purpose of the rule is to give the opportunity to the inferior court to try the case first upon the merits, and only thereafter should the Court of First Instance be allowed to retry the case, or to conduct another trial thereof on the merits.

For the foregoing considerations, the order appealed from should be, as it is hereby, reversed, and the Court of First Instance of Cavite is hereby ordered to proceed with the trial of the case by virtue of its appellate jurisdiction.

Parás, C. J., Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, Concepcion, and *Diokno, JJ.*, concur.

Order reversed.

DECISIONS OF THE ELECTORAL TRIBUNAL OF THE HOUSE OF REPRESENTATIVES

[ETHR. No. 63. September 25, 1951]

RAMON P. MITRA, protestant, *vs.* DENNIS MOLINTAS, protestee

1. ELECTION PROTESTS; MARKED BALLOTS.—"Ordinarily, a ballot will not be invalidated because of marks which were accidentally or carelessly made, as where it was marked while folding it when the ink was still wet, or because of inadvertent pencil marks, very small punctures accidentally made by the point of a sharp pencil while marking it, or slight parallel streaks, apparently made by a careless movement of the stamp across the ballot."

2. ID.; ID.—A ballot is marked with a star on the first line for senators, even touching the letters of the name of the first candidate voted upon. *Held:* There is really no reason why the elector should put a star on his ballot unless he really wanted to identify his vote. This is one of the rare marks which should be considered sufficient to invalidate the ballot.

3. ID.; ID.—Some ballots are objected to on the ground that they are marked because the coupons on the top thereof have not been detached. In the records of this case it appears that one of the inspectors testified that the inspector really did not know that the coupon should be detached before dropping the ballots in the ballot box. *Held:* These ballots are valid. We should not penalize the elector for mistakes committed by the election officers.

4. ID.; ID.—Where it is evident that after the elector wrote "Abada" on the first line for senators, he did not want to vote for any other candidate and drew a line on that space, the ballot is valid and should be admitted.

5. ID.; ID.—A ballot is marked by two vertical lines on the columns for Liberal Party Avelino Wing and the Nacionalista Party. Evidently, the elector wanted to make manifest that he did not want to vote for any candidate of these two parties for which reason he crossed the names of all the candidates appearing on these two columns. *Held:* This ballot is not considered marked and the same is hereby admitted.

6. ID.; ID.—On a number of ballots the word "Nacionalista" was written diagonally across the space for senators, and on the other ballots the word "Liberal" was written diagonally across the space for senators. *Held:* These words Liberal and Nacionalista do not constitute identifying marks because evidently the elector wanted to signify that he was voting for the candidates of the Nacionalista Party for senators where he wrote the word Nacionalista, and that he was voting for the Liberal Party candidates when he wrote the word Liberal. These ballots are therefore admitted.

7. ID.; ID.—Marks which apparently are letters "C" but which in reality are check marks have been decided in this jurisdiction as not constituting marks sufficient to invalidate the

ballot, unless it is shown that the elector clearly wanted to identify his ballot. Such ballots should be admitted.

8. ID.; ID.—Where the ballot is torn on the upper left hand corner and it appears to have been accidentally torn, the ballot must be admitted (sec. 149, Rev. Elec. Code).

9. ID.; ID.—A ballot is marked with illegible writings on the first space for senators. The elector is a poor scribe and he tried to write something which is not considered distinguishing marks. *Held:* The ballot is admitted.

10. ID.; ID.—Where the marks objected to are the lines which the elector used to cross out certain writings which he wanted to erase and not for the purpose of identifying his vote, the ballot should be admitted, the crossing out being an honest mistake on the part of the elector.

11. ID.; ID.—A ballot marked by a dot on its face and on its back is not considered a marked ballot and should be admitted.

12. ID.; ID.—The word "Liberal" is written upside down in the rectangle the block voting. *Held:* This is no marks at all and the ballot is valid.

13. ID.; ID.—The name of the protestee is written in bolder or heavier letters. It can be seen from the ballot, however, that the elector used indelible pencil and must have placed the pencil in his mouth in order to write clearly the name of the protestee. *Held:* This is no mark and the ballot is valid.

14. ID.; ID.—The elector wrote the letters "L.P." and "N.P.", respectively, after the names of the candidates he voted for. *Held:* These are no marks at all because it is apparent that the elector wanted to identify that one candidate belonged to the Liberal Party and the other to the Nacionalista Party.

15. ID.; ID.—Where the word "Liberal" is written on the ballot in pencil and the other names in ink, following the established doctrine in this jurisdiction, the ballot should be admitted in the absence of evidence that the elector intended to mark his ballot (sec. 149, par. 10, Rev. Elec. Code).

16. ID.; NAME OF CANDIDATE VOTED UPON, WRITTEN ON WRONG SPACE.—Ballot on which the name of a candidate for representative is written on the left hand side of the ballot under the words "Liberal Party" or in the space intended for block voting or in the space for senator or vice-president and not in the proper space for representative, should be rejected. Article V, section 1, of our Constitution requires that, in order to be entitled to vote, the voter must be able to read and write. And section 135 of the Revised Election Code orders the voter, in filling his ballot, to do so "by writing in the proper space for each office the name of the person for whom he desires to vote." However, where the name of the candidate voted upon appears just below the names of the Liberal Party candidates, and there is no mark thereon to show that the elector intended to identify the same, the intention of the elector to vote for the name he wrote thereon is manifest and the ballot should be admitted.

17. ID.; ID.—The fact that the name "Quirino" appears in the space for block voting does not invalidate the vote, where the name of the protestant is clearly written in the proper space.

18. ID.; ID.—Where the name of the candidate appears near the words "For Representative," or slightly above them, or a little below them, the ballot should be admitted.

19. ID.; BALLOTS PREPARED BY MORE THAN ONE PERSON.—Ballots prepared by more than one person should be discounted.

20. ID.; ID.—On a ballot the words Laurel, Briones and Molintas were written by one person who really voted for these candidates, but some criminal hands tampered this ballot later on and wrote the names Recto and Legarda. *Held:* We can not penalize the elector for the criminal act of another person. Consequently, this ballot is valid.

21. ID.; SPOILED BALLOTS.—Four ballots were taken from the red box. There is no evidence that these ballots are not really spoiled and were placed in the red box by mistake (*see* Lucero *vs.* Guzman, 45 Phil., 852, and Ignacio *vs.* Navarro, 57 Phil., 1000). Moreover, in three of those ballots the name of the protestee appears in spaces for senators and vice-president and in the space for block voting, respectively. *Held:* These ballots are rejected.

22. ID.; TWO PERSONS, VOTED FOR REPRESENTATIVE.—Where two persons are, in a ballot, voted for representative, the tribunal is not in a position to know for whom the elector intended to vote. And the ballot having come, moreover, from the red box, the ballot should be rejected.

23. ID.; BLOCK VOTING.—Where the words "I vote for Liberal" appear in the space for president, these words indicate that the elector wanted to vote for the Liberal Party. Following the doctrine laid down in Fornier *vs.* Villavert (47 Off. Gaz., No. 4, p. 1789) the ballot should be admitted.

24. ID.; ID.—Where the words "all vote" appear on the first line on the space for senators, the ballot should be admitted, the elector having intended to vote for all the candidates for senator of the Liberal Party, and there being no evidence to show that the elector meant to mark or identify the ballot (Fornier *vs.* Villavert, 47 Off. Gaz., No. 4, p. 1789).

25. ID.; ID.—Where the elector used both the block voting and the individual voting for an entire ticket of a party and at the same time votes for an individual candidate, the vote for the individual candidate prevails.

26. ID.; BALLOTS FROM THE RED BOX.—Three ballots came from the box for spoiled ballots. There is no evidence that these ballots were not substituted or that they were placed in the red box by mistake. *Held:* Ballots found in the box for spoiled ballots are presumed to have really been spoiled and that another ballot was substituted. For this reason, they are rejected.

27. ID.; SECRECY OF BALLOT BOX VIOLATED AND BALLOTS TAMPERED WITH.—The secrecy of the box for valid ballots in a precinct has been violated and many of the ballots tampered with as shown by erasures in many ballots where the candidate's name under "Representative" was substituted by one or the other. There is no direct evidence of tampering; much less is there evidence as to who tampered with these ballots. *Held:* The ballots are accepted as valid or rejected as void after a very careful examination as to the real intention of the elector. Where the name which was erased could still be made out, the ballot is adjudicated to that candidate, and not to the one whose name is placed over the erased name. But where the name that has been erased could not be distinguished and there is no way of finding out whose name it is, such ballot is not adjudicated in favor of any candidate but is declared void.

28. ID.; ANNULMENT OF ELECTION IN CERTAIN PRECINCTS, DENIED.—The right of suffrage is one of the most vital rights in a democracy like ours and electors ought not, except on the strongest proof, be disenfranchised by annulment of the election in certain precincts. (Rimando *vs.* Jose, Election Case No. 3, 6 Lawyers' Journal, 116; Rosanes *vs.* Peji, 53 Phil., 25; Howard *vs.* Cooper, I Earlett's Election Cases, 276).

ELECTION PROTEST

The facts are stated in the opinion of the Tribunal.

Ramon P. Mitra in his own behalf.

Tolentino, Nietes, Camacho and *Sinai C. Hamada* for protestee.

FORNIER, *M.:*

In the elections held on November 8, 1949, the protestant, Ramon P. Mitra, and the protestee, Dennis Molintas, were both candidates for member of the House of Representatives for the second district of the Mountain Province. There were four other candidates for the same position but they did not take part in this protest. On December 29, 1949, the corresponding board of canvassers proclaimed the protestee, Dennis Molintas, as the duly elected representative for said second district with a plurality of seventy-two (72) votes over the protestant, having obtained, according to the certificate of proclamation, Exhibit B, a total of 6,180 votes.

The protestant filed his motion of protest on January 13, 1950, alleging the commission of terrorism, frauds, irregularities and other violations of law. Similar allegations were made in the answer which the protestee filed in due time. In addition, the answer contained a counter-protest affecting fifty-five (55) precincts. Thereafter, revisors were appointed to revise the ballots.

While the revision was in progress, the protestee, on May 22, 1950, moved to withdraw his counter-protest with respect to thirty-three (33) precincts. This motion was granted on June 16, 1950. Upon termination of the revision and the submission of the report of the revisors, the case was set for hearing. The ballots in the protested precincts were presented together with the report of revision, Exhibit C. After the protestant had closed his evidence, the protestee presented his evidence. He rested his case, however, without presenting as evidence the ballots involved in the counter-protested precincts and the report of the revision. Consequently, said ballots and the report of revision could not be taken into consideration in the determination of this case, and this Tribunal so ruled in a resolution promulgated on August 25, 1951.

The canvass of the Provincial Board of Canvassers, Exhibit B–1, shows the following result:

Mitra	6,108
Molintas	6,180

From a comparison of the votes shown in the proclamation made by the Provincial Board of Canvassers and the votes claimed by both parties, as shown by the report of the revisors, a big discrepancy can easily be seen. We shall deal with this point in the course of this decision and in the appreciation of the ballots presented as evidence. The surnames of both the protestant and the protestee start with the letter "M" and, to prevent confusion, ballots claimed by the protestant were marked "R" and those claimed by the protestee were marked "D", these being the first letters of their first names. This representative district was declared free zone by the Liberal Party for their candidates for representative. Consequently, whenever the Liberal Party is voted in the space for block voting, the vote for representative can not be counted in favor of either the protestant or the protestee in this case.

We shall now proceed with the appreciation of the ballots.

LA TRINIDAD

Precinct No. 1

In this precinct, the protestant claims 95 ballots from the box for valid ballots, while the protestee claims 151. Of the ballots claimed by the protestant, 7 are objected to by the protestee, and of the ballots claimed by the protestee, 10 are objected to by the protestant.

Exhibits D–5, D–6, D–7, D–8 and D–9 are admitted because the dot at the back of Exhibit D–5, the ink spots and thumbmark in Exhibit D–6, the ink spots in Exhibit D–7, and the ink spots and thumbmarks in Exhibits D–8 and D–9 are not identifying marks.

"Ordinarily, a ballot will not be invalidated because of marks which were accidentally or carelessly made, as where it was marked while folding it when the ink was still wet, or because of inadvertent pencil marks, very small punctures accidentally made by the point of a sharp pencil while marking it, or slight parallel streaks, apparently made by a careless movement of the stamp across the ballot." (20 C. J., 165, cited in Laurel on Elections, p. 224.) (See also par. 18, Sec. 149, Revised Election Code.)

Exhibit D–13 is objected to by the protestant on the ground that the name appearing thereon, which is "Milates", is not that of the protestee nor is it *idem sonans* with his name. Guided by the basic rule of

liberality in the appreciation of ballots, this Tribunal voted to count this ballot in favor of the protestee. (See Sec. 149, par. 2, Revised Election Code.)

Exhibit D–15 is objected to on the ground that the name appearing thereon is not that of the protestee. Upon examining the same, it was found that the word appearing reads "Molintas" which is the correct surname of the protestee. This ballot is admitted in his favor.

Exhibit D–16 is objected to on the ground that the name appearing thereon is not that of the protestee. The name written reads "Molinlas", the elector having failed only to cross his "t". This ballot is admitted for the protestee. (Bulan *vs.* Gaffud (1927), 49 Phil., 906.)

Exhibit D–17 contains in the proper space the name "Molitas" which is *idem sonans* with the name of the protestee. This ballot is hereby admitted.

Exhibit D–18 is objected to on the ground that the name of the protestee does not appear in the proper space of the ballot. This objection is well taken and the ballot is rejected. The name of the protestee appears on the left hand side of the ballot under the words "Liberal Party". Article V, section 1, of our Constitution requires that, in order to be entitled to vote, the voter must be able to read and write. And section 135 of the Revised Election Code orders the voter, in filling his ballot, to do so "by writing in the proper space for each office the name of the person for whom he desires to vote".

Exhibit R–1 is objected to by the protestee on the ground that the name of the protestant has been written in the space intended for block voting and not in the proper space for representative. The ballot is rejected.

Exhibits R–2 and R–3 are objected to on the same ground as Exhibit R–1. In Exhibit R–2 the word "Nacionalista" appears in the space intended for block voting, and the name of the protestant appears immediately above the words "For Senators" in the printed column of candidates of the Nacionalista Party. This ballot is rejected. In Exhibit R–3, the name of the protestant appears immediately below the printed name of "Leonardo Rilloraza" who was the Nacionalista candidate for representative. But the person who wrote "Liberal" in the space for block voting is different from the person who wrote the name of the protestant. This ballot is also rejected.

"In the second assignment of error, it is contended that ballots Exhibits C–1 to C–8, D–1 to D–6 and D–8 were unduly discounted from the appellant on the ground that each of said ballots had been written by more than one person. These questioned ballots have been examined personally by the members of this Court, and we are of the opinion that ballots C–1 to C–8 were each written by at least two persons, with the exception of ballot C–3, where we

found no such defect. Therefore, ballots C–1 to C–8 were correctly discounted by the trial court, with the exception of ballot C–3, which should be counted in favor of the appellant. Likewise, it appears that ballot C–9 in favor of the appellee, Raymundo Icay, was written also by at least two persons, and should also be discounted from said appellee, Raymundo Icay, contrary to the ruling of the trial court. The reason for discounting these ballots is based on the violation of the secrecy of suffrage enjoined by section 452 of the Election Law." (Icay *vs.* Diapo (1929); S. C., G. R. No. 30671.)

Exhibit R–8 is objected to on the ground that there is an ink spot which appears to be a thumbmark at the back thereof. This mark must have been accidentally placed on the ballot while handling it. This ballot is hereby admitted.

For the same reason, ballots Exhibits R–9, R–10 and R–11, which contain accidental ink marks thereon, are hereby admitted. (Sec. 149, par. 18, Revised Election Code.)

Summarizing, the votes obtained by the parties in this precinct are as follows:

Protestant—	
Ballots uncontested	88
Ballots contested but Admitted	4
Total	92
Protestee—	
Ballots uncontested	141
Ballots contested but Admitted	9
Total	150

LA TRINIDAD

Precinct No. 2

In this precinct, 92 ballots are claimed by the protestant and 118 ballots are claimed by the protestee. Of the ballots claimed by the protestant, 4 are objected to by the protestee, namely, Exhibits R–1, R–2, R–4, R–7, leaving 88 ballots of the protestant not objected to. Of the ballots claimed by the protestee, 1 is objected to by the protestant, leaving 117 ballots of the protestee not objected to.

Exhibit R–1 is objected to on the ground that the name "Mitra" is written in one of the spaces for Senator. This ballot is also hereby rejected.

Exhibit R–2 is objected to on the ground that the name appearing thereon is not that of the protestant nor is it *idem sonans* with his name. An examination of this ballot shows that the name appearing thereon is clearly that of the protestant. This ballot is admitted.

Exhibit R–4 is objected to on the ground that it is marked wth two letters "C" appearing on its face. Upon examination of the ballot it has been found that what appear to be letters "C" are check marks placed after the names of "Elpidio Quirino" and "Fernando Lopez", apparently to emphasize the desire of the elector to vote for these two persons. Moreover, marks of this kind have been decided in this jurisdiction as not constituting marks sufficient to invalidate the ballot unless it is shown that the elector clearly wanted to identify his ballot. This ballot is, therefore, admitted.

Exhibit R–7 is objected to on the ground that the name appearing thereon is not that of the protestant. This objection is not well taken and the ballot is hereby admitted.

Exhibit D–1 is objected to on the ground that the name of the protestee is not written in the proper space. The objection is well taken and the ballot is hereby rejected.

Summarizing, the votes obtained by the parties in this precinct are as follows:

Protestant—	
Ballots uncontested	88
Ballots contested but Admitted	3
Total	91
Protestee—	
Ballots uncontested	117
Ballots contested but Admitted	0
Total	117

LA TRINIDAD

Precinct No. 4

In this precinct the protestant claims 41 ballots, while the protestee claims 103 ballots. Of the ballots claimed by the protestant, 3 are objected to by the protestee, and of those claimed by the protestee, 6 are objected to.

Exhibit R–1 is objected to on the ground that the name of the protestant does not appear in the proper space. The name appears in the space for president and the ballot is, therefore, rejected.

On the same ground, ballot Exhibit R–2 is objected to, the name of the protestant being written in the space for vice-president. The same is, therefore, rejected.

Exhibit R–3 is objected to on the ground that the name of the protestant appears immediately below the printed words "Liberal Party". For the reason stated wth respect to ballots of the protestee similarly prepared, this ballot is rejected.

Exhibit D–1 is objected to on the ground that the name is not written on the proper space for representative. The

name appears just below the words "Liberal Party" in the printed column of candidates of that party. The intention of the elector to vote for the protestee is not clear and the ballot is rejected.

Exhibit D–2 is objected to on the same ground that the name of the protestee is written in the space for president. This ballot is rejected.

Exhibit D–7 is objected to on the ground that it is marked. The name of the protestee appears just below the words "For Representative" in the column containing the names of the Liberal Party candidates. The intention of the elector to vote for the protestee for representative is manifest. We do not find any mark on this ballot to show that the elector intended to identify the same. This ballot is admitted.

Exhibit D–2 is objected to on the same ground that following words appear in the space for president: "I vote for Liberal". These words indicate that the elector wanted to vote for the Liberal Party. Following the doctrine laid down by the Supreme Court in the case of Fornier *vs.* Villavert, G. R. No. L–3050, October 17, 1949, where said Court held that, "In F–269, the voter wrote on the second line for councilor 'I vote for Nacionalista', neither should this ballot be invalidated for the governor on account of said words," this ballot is admitted.

Exhibit D–12 is objected to on the ground that the word "Liberal" is written in pencil and the other names in ink. Following the established doctrine in this jurisdiction, in the absence of evidence that the elector intended to mark his ballot, this ballot is admitted. (Par. 10, sec. 149, Revised Election Code.)

Exhibit D–13 is objected to on the ground that the words "all vote" appear on the first line in the space for senators. Following the doctrine in the case of Fornier *vs.* Villavert, *supra,* this ballot is admitted, the elector having intended to vote for all the candidates for senator of the Liberal Party, and there being no evidence to show that the elector meant to mark or identify the ballot.

Summarizing, the votes obtained by the parties in this precinct are as follows:

Protestant—	
Ballots uncontested	38
Ballots contested but Admitted	0
Total	38
Protestee—	
Balots uncontested	97
Ballots contested but Admitted	4
Total	101

LA TRINIDAD

Precinct No. 6

In this precinct the protestant claims 61 ballots from the box for valid ballots, and one ballot, Exhibit R–1, from the box for spoiled ballots, making a total of 62 ballots. The protestee, upon the other hand, claims 111 ballots. Of the ballots claimed by the protestant, Exhibit R–1 is objected to by the protestee, and of the ballots claimed by the protestee from the box for valid ballots, the protestant objected to 4 ballots. Protestee withdrew his claim to Exhibits D–7 and D–12 which were taken from the red box. From the box for spoiled ballots the protestee claims six ballots, namely, Exhibits D–7 to D–12, but as above stated he withdrew his claim to Exhibits D–7 and D–12. The protestant objected to the remaining four ballots.

Exhibit D–1 is questioned on the ground that the name of the protestee does not appear in the proper space of the ballot. This Tribunal, desirous of giving effect to the manifest intention of the voter, now rules that where the name of the candidate, as in this case, appears near the words "For Representative", the ballot should be admitted. Exhibit D–1 is, therefore, admitted.

Exhibit D–2 is objected to on the ground that the name of the protestee does not appear in the proper space. His name appears just below the words "Liberal Party". Ballots of this kind have heretofore been rejected. Exhibit D–2 is, therefore, rejected.

Exhibit D–3 is objected to because the protestee's name appears just below the words "For Representative". This ballot is admitted.

Exhibit D–6 is objected to on the ground that there is a name written in the space intended for block voting. The name of the protestee appears in the space for 12 representatives and whatever is written in the other spaces can not affect the vote in favor of the protestee. This ballot is admitted.

Exhibits D–8, D–9, D–10 and D–11 were taken from the red box. There is no evidence showing that these ballots are not really spoiled and were placed in the red box by mistake (*see* Lucero *vs.* Guzman, 45 Phil., 852, and Ignacio *vs.* Navarro, 57 Phil., 1000). Moreover, in Exhibits D–8, D–9 and D–11, the name of protestee appears in spaces for senators and vice-president and in the space for block voting, respectively. These ballots are rejected.

Exhibit R–1 is objected to on the ground that two persons are voted for representative. This Tribunal is

not in a position to know for whom the elector intended to vote. Moreover, this ballot came from the red box. The ballot is rejected.

Summarizing, the votes obtained by the parties in this precinct are as follows:

Protestant—	
Ballots uncontested	61
Ballots contested but Admitted	0
Total	61
Protestee—	
Ballots uncontested	107
Ballots contested but Admitted	3
Total	110

LA TRINIDAD

Precinct No. 7

In this precinct protestant claims 2 ballots, 1 of which is objected to by the protestee. The protestee claims 109 ballots, 7 of which are objected to by the protestant.

Exhibit R–1 is objected to on the ground that the name of the protestant does not appear in the space for representative. Protestant's name appears just above the words "For Representative" in the column intended for the candidates of the Liberal Party. This ballot is admitted for the protestant.

Exhibits D–1, D–2, D–3 and D–4 are objected to on the ground that the name of the protestee does not appear in the proper space of the ballot. The name of the protestee is written in the space for president in Exhibit D–1; in the second space for senators in Exhibit D–2; in the space intended for president in Exhibit D–3; and within the rectangle intended for block voting in Exhibit D–4. These ballots are rejected.

Exhibit–5 is objected to on the ground that the name appearing thereon is not that of the protestee. Upon examination of the ballot, it was found that the word written reads "Malnlas", which is *idem sonans* with the name of the protestee. This ballot is admitted for the protestee. For the same reason, Exhibit D–9 is admitted, the word appearing therein reading "Mintas".

Exhibit D–14 is objected to on the ground that the name is marked with illegible writings on the first space for senators. The elector is a poor scribe and he tried to write something which we can not consider to be distinguishing marks. This ballot is admitted.

Summarizing, the votes obtained by the parties in this precinct are as follows:

Protestant—	
Ballots uncontested	1
Ballots contested but Admitted	1
Total	2
Protestee—	
Ballots uncontested	102
Ballots contested but Admitted	3
Total	105

KABAYAN

Precinct No. 3

The protestant claims 32 ballots while the protestee claims 147 ballots. Of the ballots claimed by the protestant, 15 are objected to by the protestee and of the ballots claimed by the protestee, 20 are objected to by the protestant.

In Exhibits R–1 to R–15 the name of the protestant appears just below the words "For Representative" in the column intended for the Liberal Party. Following the ruling heretofore set, these ballots are hereby declared valid for the protestant.

Exhibits D–3 to D–14 are objected to on the ground that the name of the protestee does not appear in the proper space. In Exhibit D–3 the name of the protestee appears just below the words "Liberal Party". This ballot is, therefore, rejected. In Exhibits D–4 and D–5, the name of the protestee appears near the words "For Representative" and, following the ruling heretofore set of giving weight to the intention of the voter, said ballots are admitted for the protestee. Exhibit D–6 the name of the protestee appears over the words "For Vice-President". This ballot is rejected. In Exhibits D–7 to D–11 the name of the protestee appears near the words "For Representative" in the column for the candidates of the Liberal Party and the same are admitted. Exhibits D–12, D–13 and D–14 are objected to on the ground that the name of the protestee does not appear in the proper space. His name appears near the words "For Representative". These three ballots are admitted.

Exhibits D–17, D–18, D–19 and D–20, which contain the name of the protestee near the words "For Representative" in the column intended for Liberal Party candidates, are objected to on the ground that they are written by one and the same person. The objection is not well taken and these four ballots are admitted.

Exhibits D–21 and D–23 are objected to on the ground that they are written by one and the same person. Upon examination of the ballots, we found that the objection is not well founded and the ballots are hereby admitted.

Exhibits D–27 and D–28 are objected to on the ground that the names appearing thereon are not that of the protestee, nor have they a sound similar to his name. In Exhibit D–27 the word appearing is "Maliata" which is *idem sonans* with the name of the protestee. In Exhibit D–28 the word appearing is "Monilas" which is also *idem sonans* with the name of the protestee. Both ballots are admitted.

Summarizing, the votes obtained by the parties in this precinct are as follows:

Protestant—	
Ballots uncontested	17
Ballots contested but Admitted	15
Total	32
Protestee—	
Ballots uncontested	127
Ballots contested but Admitted	18
Total	145

KABAYAN

Precinct No. 5

The protestant claims 36 ballots while the protestee claims 135 ballots. Of the 36 ballots claimed by the protestant, 17 are contested by the protestee, and of the 135 ballots claimed by the protestee, 28 are contested by the protestant.

Exhibit R–1 is objected to on the ground that the name of the protestant appears in the space intended for block voting. Following the rule heretofore established, this ballot is rejected.

Exhibits R–2 to R–6 are objected to on the ground that they were written by one and the same person. After examination of these ballots, the Tribunal has arrived at the conclusion that the objection is well taken. These ballots are, therefore, rejected.

Exhibit R–7 is objected to on the ground that the word "Molintas" was first written on the ballot and later other names, including that of the protestant, were written in the other spaces of the ballot. This ballot is admitted for the protestee.

Exhibits R–8 and R–9 are objected to on the ground that they were written by one and the same person. The objection is well taken and the same are rejected.

Exhibits R–10 and R–11 are objected to on the ground that they were written by one and the same person. Upon examination of these ballots, the Tribunal arrived at the conclusion that they were filled by one and the same person. The same are hereby rejected.

Exhibits R–12 and R–13 are objected to on the ground that they were written by one and the same person. The Tribunal is of the opinion that the objection is well taken and they are, therefore, rejected.

Exhibit R–14 is objected to on the ground that it is marked by a dot on its face and back. The Tribunal does not consider the ballot marked and the same is hereby admitted.

Exhibit R–17 is objected to on the ground that it is marked by two vertical lines on the columns for Liberal Party Avelino Wing and the Nacionalista Party. Evidently, the elector wanted to make manifest that he did not want to vote for any candidate of these two parties for which reason he crossed the names of all the candidates appearing on these two columns. Consequently, this ballot is not considered marked and the same is hereby admitted.

Exhibit R–18 is objected to on the ground that the name appearing therein is not that of the protestant. The objection is not well taken as the name of the protestant clearly appears on the ballot. The same is hereby admitted.

Exhibit R–23 is objected to on the ground that there are ink spots at the back thereof. These ink spots must have been accidentally placed on the ballot in handling the same and were not intended to identify the vote. Consequently, the same is admitted.

Exhibit D–1 is objected to on the ground that the name of the protestee is not written in the proper space. Upon examination, however, it was found that the protestee's name was written just below the name "Leonardo Rilloraza", which is immediately below the words "For Representative". In the same manner that other ballots of the same kind were admitted, this ballot is hereby admitted.

Exhibits D–2 and D–3 are objected to on the ground that the same were prepared by the same person. The objection is well taken and the said ballots are rejected.

Exhibits D–4 to D–22 are objected to on the ground that they are written by one and the same person. The Tribunal is of the opinion that these ballots were really written by one person, and following the ruling heretofore followed, these ballots are hereby rejected.

Exhibits D–23 to D–28 are objected to on the ground that they are written by one and the same person. We found that these ballots were written by one and the same person, upon examination thereof. Consequently, they are rejected.

Summarizing, the parties obtained the following votes in this precinct:

Protestant—	
Ballots uncontested	19
Ballots contested but Admitted	4
Total	23
Protestee—	
Ballot uncontested	107
Ballots contested but Admitted	2
Total	109

TUBLAY

Precinct No. 2

In this precinct the protestant claims 16 ballots, while the protestee claims 152 from the box for valid ballots and 10 ballots from the box for spoiled ballots. Of the ballots claimed by the protestant from the box for valid ballots, 5 ballots are objected to by the protestee, and the single ballot claimed by him from the box for spoiled ballot is objected to. Of the 152 ballots claimed by the protestee from the box for valid ballots, 6 are objected to by the protestant, namely, Exhibits D–2, D–3, D–4, D–7, D–8 and D–10, and all the ballot claimed by him from the box for spoiled ballots are objected to by the protestant. Protestee also claims 3 ballots marked likewise as D–1, D–2 and D–4 from the box for valid ballots which were rejected by the Board of Revisors. They were all objected to by the protestant.

Exhibits R–1 and R–2 are objected to on the ground that they are written by the same person. The objection is not tenable and these ballots are admitted.

Exhibits R–5 and R–6 are objected to on the ground that they are written by one and the same person. This objection is not well taken and these ballots are admitted.

Exhibit R–7 is objected to on the ground that there is an identifying mark consisting of a dirt on or about "Mitra". It is clear that this dirt was not intentionally placed on the ballot. Apparently, the elector made a mistake in writing the name and he had to erase it, thereby causing the dirt. This ballot is therefore admitted.

Exhibits D–2 and D–3 are objected to for having been prepared by one and the same person. The objection is well taken and they are therefore rejected.

Exhibit D–4, D–7, D–9 and D–10 are objected to on the ground that they were prepared by one and the same person. Upon examination of the ballots, we found that the objection is not well taken, and these ballots are admitted.

Exhibit D–1 is admitted for protestee because the word appearing in the space for representative in this ballot

reads "Noletas" which is *idem sonans* with the name of the protestee. This ballot is, therefore, admitted.

Exhibit D–2 is rejected on the ground that the name appearing thereon is not that of the protestee and the same does not appear in the proper place.

Exhibit D–4 is objected to on the ground that the name does not appear in the proper space. The name of the protestee appears in the space just above the words "For Representative", in the column intended for the candidates of the Liberal Party. The same is admitted.

Exhibit R–8 was taken from the box for spoiled ballots. There is no evidence showing that this ballot has not been replaced. Moreover, the name appearing therein is illegible. The same is, therefore, rejected.

Exhibits D–19 to D–27 and D–29 were taken from the box for spoiled ballots. For the same reason that Exhibit R–8 was rejected, because it was taken from the red box, these ballots are hereby rejected.

Summarizing, the votes obtained by the parties in this precinct are as follows:

Protestant—	
Ballots uncontested	11
Ballots contested but Admitted	5
Total	16
Protestee—	
Ballots uncontested	146
Ballots contested bu Admitted	6
Total	152

TUBLAY

Precinct No. 3

In this precinct the protestant claims 34 ballots and the protestee claims 116 ballots. Of the 34 ballots claimed by the protestant, 6 are objected to, and of the 116 ballots claimed by the protestee 13 ballots are objected to by the protestant. Protestee claims 4 ballots from the red box which are all contested by the protestant.

Exhibits R–1, R–2, R–3 and R–4 are objected to on the ground that the name of the protestant does not appear on the proper space for representative. In Exhibit R–1 the name appears on the line for president and in Exhibit R–2 the name appears in the line for vice-president. Consequently, these ballots are rejected. In Exhibit R–3 the name of the protestant appears written between the word "Fernando Lopez" and the words "For Representative". Following the ruling heretofore set on the same kind of ballots, this ballot is admitted. In Exhibit R–4 the name of the protestant appears on the first line for

senators. The objection is well founded and this ballot is hereby rejected.

Exhibits R–9 and R–10 are objected on the ground that they are written by one and the same person. Upon examination of these ballots, it was found that they were prepared by different persons and they are admitted.

Exhibits D–1, D–2, D–3 and D–4 are objected to on the ground that the name of the protestee is not written in the proper space. In Exhibit D–1, the name of the protestee is written over the words "For Vice-President". This ballot is rejected. In Exhibits D–2, D–3 and D–4 the name of the protestee appears written near the words "For Representative". These ballots are admitted.

Exhibit D–5 is objected to on the ground that the name of the protestee appears on the space for senators; Exhibit D–6, where the name of the protestee appears on the line for president; and Exhibit D–7, where the name appears between the words "E. Quirino" and "For Vice-President". These ballots are rejected.

Exhibits D–8, D–9, D–10, D–11 and D–15 are objected to on the ground that the name of the protestee does not appear in the proper space. In Exhibits D–8 and D–9 protestee's name appears immediately above the words "For Representative". The same are, therefore, admitted.

In Exhibit D–10 the name of the protestee appears just below the words "Official Candidates" in the column intended for the candidates of the Liberal Party and the same is rejected. In Exhibit D–11 the name of the protestee appears just below the name "Leonardo Rilloraza." This ballot is valid.

In Exhibit D–15 the name "Mulintas" appears just below the words "For Representative", and the same is admitted.

In Exhibits D–16 the objection is on the ground that the name appearing thereon is not that of the protestee. The word reads "Meintas" which is *idem sonans* with the name of the protestee. This ballot is admitted.

Exhibits D–29, D–30, D–31 and D–32 are objected to on the ground that these ballots were taken from the box for spoiled ballots. For the same reason that ballots from the spoiled ballot box have been rejected, the same are hereby rejected.

Summarizing, the votes obtained by the parties in this precinct are as follows:

Protestant—	
Ballots uncontested	28
Ballots contested but Admitted	3
Total	31

Protestee—	
Ballots uncontested	103
Ballots contested but Admitted	8
Total	111

ATOK

Precinct No. 1

In this precinct the protestant claims 3 ballots and the protestee claims 69 ballots. Of the ballots claimed by the protestant, none is objected to by the protestee; and of ballots of the protestee, 4 are objected to by the protestant.

Exhibit D–1 is objected to on the ground that the name of the protestee appears on the space for president. This ballot is rejected.

In Exhibit D–2 the name appearing therein is "Dennis" which is the first name of the protestee. The same is hereby admitted.

In Exhibit D–3 the word appearing just immediately below the words "For Representative" reads "Molislas" which is *idem sonans* with protestee's name. The same is admitted.

In Exhibit D–4 the word appearing just below the words "For Representative" reads "Mralirnas" which is *idem sonans* with the name of the protestee and the same is admitted.

Summarizing, the votes obtained by the parties in this precinct are as follows:

Protestant—	
Ballots uncontested	3
Ballots contested but Admitted	0
Total	3
Protestee—	
Ballots uncontested	65
Ballots contested but Admitted	3
Total	68

ATOK

Precinct No. 2

In this precinct the proestant claims 4 ballots and the protestee claims 141 ballots. Of the ballots of the protestant one is objected to by the protestee, and of the ballots of the protestee 6 ballots are objected to by the protestant.

Exhibit R–1 is objected to on the ground that the name of the protestant appears on the line for president. This ballot is therefore rejected.

Exhibit D–4 is objected to on the ground that it is marked. We do not see any identifying mark and the same is, therefore, admitted.

In Exhibit D–5 which is objected to on the ground that the name is not that of the protestee, the name appearing thereon reads "Molutas" which is *idem sonans* with the name of the protestee. The same is admitted.

In Exhibit D–6 the name of the protestee is written just immediately above the words "For Representative" in the column intended for the Liberal Party Avelino Wing. The same is admitted.

Exhibit D–7 is objected to on the ground that the word "Liberal" immediately preceding "Molintas" is an identifying mark. The objection is not well taken and this ballot is admitted.

In Exhibit D–8 the objection is that the voter voted "Avelino Liberal Wing" in the space for block voting, consequently, the vote for representative must be credited to the candidate for representative of the Avelino Liberal Wing. The name of the protestee appears immediately below the words "For Representative" in the column intended for the candidates of the Liberal Party. Under the system of block voting, the appearance of the name of an individual candidate in the ballot annuls the entire vote intended for block voting. Therefore, this ballot is admitted for the protestee.

In Exhibit D–9 the name of the protestee appears in the rectangle intended for block voting. Consequently, the same is rejected.

Summarizing, the votes obtained by the parties in this precinct are as follows:

Protestant—	
Ballots uncontested	3
Ballots contested but Admitted	0
Total	3
Protestee—	
Ballots uncontested	135
Ballots contested but Admitted	5
Total	140

ATOK

Precinct No. 5

In this precinct the protestee claims 108 ballots. There is not a single ballot for the protestant. Of the ballots claimed by the protestee, 14 ballots are objected to by the protestant.

In Exhibit D–1 the name of the protestee appears immediately below the words "For Representative". This ballot is admitted.

Exhibits D–12 and D–13 are objected to on the ground that they are written by one and the same person. The objection is well taken and these ballots are rejected.

Exhibits D–15 to D–20 are objected to on the ground that they are written by one and the same person. Upon examination of the ballots, the Tribunal is of the opinion that the objection is well taken. The elector apparently concealed the identity of his writing and prepared these ballots in a mechanical form, believing perhaps that the same may not be discovered. These ballots are, therefore, rejected.

Exhibits D–28 and D–29 are objected to on the ground that they are written by one and the same person. It can really be seen that the writing on these ballots belong to the same person. The same are hereby rejected.

Exhibits D–30, D–31 and D–32 are objected to as written by one and the same person. Upon a careful scrutiny of these ballots, the Tribunal is of the opinion that the objection is well taken and these ballots are rejected.

Summarizing, the votes obtained by the parties in this precinct are as follows:

Protestant—	
Ballots uncontested	00
Ballots contested but Admitted	00
Total	00
Protestee—	
Ballots uncontested	94
Ballots contested but Admitted	1
Total	95

BOKOD

Precinct No. 4

The protestant claims 7 ballots, including 2 stray ballots, and the protestee claims 226 ballots, including 9 stray ballots. Of the ballots claimed by the protestant, Exhibits R–1 and R–2 are objected to by the protestee; and of the ballots claimed by the protestee, 24 are objected to by the protestant.

Exhibits R–1 and R–2 are objected to on the ground that the name appearing thereon is not that of the protestant and that it is not the intention of the voter to vote for him. The name of the protestant appears on the space immediately below the words "For Representative" in the column intended for the candidates of the Liberal Party

in both these ballots. The words "Liberal" in Exhibit R–1, and "Nacionalista" in Exhibit R–2 in the space for block voting does not affect the vote of the protestant. In Exhibit R–1 the word appearing reads "Milra", the elector having failed to cross the "t"; and in Exhibit R–2 the name Mitra clearly appears. These ballots are admitted.

In Exhibit D–2 the word appearing therein is that of the protestee and the same is hereby admitted.

Exhibit D–3 is objected to on the ground that the word appearing therein is not the name of the protestee. The word reads "Malinlas". This ballot is admitted.

Exhibit D–11 is objected to on the ground that the elector did not intend to vote for the protestee for representative because there is another word in the line for representative which is illegible and the name of the protestee appears just below the words "For Representative" in the column intended for the candidate of the Liberal Party. It is also objected to on the ground that the same was written by two different persons. This vote is valid for the protestee because ballots of this kind where the name of the candidate is written below the words "For Representative" have been admitted. What appears on the line for representative which is illegible does not invalidate the ballot. Apparently, the elector here does not know how to write very well. The same is admitted.

In Exhibit D–13 the word "Liberal" appears just below the printed words "Liberal Party' and not in the space intended for block voting. This is not a tenable ground for objection and, therefore, this ballot is admitted for the protestee because his name appears in the proper space.

Exhibit D–14 is objected to on the ground that the name of the political party for which the elector wanted to vote is not clear, but that is immaterial because the name of the protestee is very clearly written on the ballot and, therefore, the same is admitted.

Exhibits D–39 to D–43 are objected to on the ground that one and the same person filled the same. Upon examination of the ballots, this Tribunal is convinced that only one person prepared these five ballots. The same are rejected.

Exhibits D–59 to D–61 are objected to on the ground that they were prepared by only one person. These ballots really appear to have been written by one person. Consequently, following the ruling heretofore set, the same are rejected.

Exhibits D–76 and D–77 are objected to as marked ballots. In Exhibit D–76 apparently the marks referred to are the lines which the elector used to cross certain

writings which he wanted to erase and not for the purpose of identifying the vote. In Exhibit D–77 the marks seem to be the erasure on the space intended for block voting where the elector wrote first the name "D. Molintas" and later on placed the word "Liberal". This was an honest mistake on the part of the elector. The same are admitted.

In Exhibit D–7 the name of the protestee appears immediately below the words "Liberal Party". This ballot is rejected.

In Exhibit D–10 the name written appears to be "Motinas" which is *idem sonans* with the name of the protestee and the same is admitted.

In Exhibit D–15 the name of the protestee appears just immediately below the words "Leonardo Rilloraza". This ballot is admitted.

Exhibit D–16 is objected to because the name of the protestee appears in the space for block voting. The same is rejected.

Exhibits D–19, D–20 and D–21 are objected to on the ground that in these ballots the name of the protestee appears just immediately above the words "For Representative". These ballots are admitted.

Exhibit D–22 is rejected because the name of the protestee appears in the line for president.

Exhibit D–23 is rejected for the same reason.

Summarizing, the votes obtained by the parties in this precinct are as follows:

Protestant—	
Ballots uncontested	5
Ballots contested but Admitted	2
Total	7
Protestee—	
Ballots uncontested	202
Ballots contested but Admitted	12
Total	214

BOKOD

Precinct No. 5

In this precinct the protestant claims 3 ballots from the box for valid ballots and one ballot from the box for spoiled ballots; while the protestee claims 205 ballots, including 8 stray ballots, from the box for valid ballots, and 2 ballots from the box for spoiled ballots, but later on withdrew his claim to one of them. Of the 3 ballots claimed by the protestant, one ballot, namely Exhibit R–3, is objected to by the protestee, and ballot Exhibit R–4 which was taken from the box for spoiled ballots is objected to by the protestee. Of the 205 ballots from the

box for valid ballots claimed by the protestee, the protestant objected to 21 ballots. The only ballot claimed by the protestee from the box for spoiled ballots, namely, Exhibit D–49, is objected to by the protestant.

Exhibit R–3 is objected to on the ground that the name appearing on the ballot is not that of the protestant. The word reads "Mitru" which is *idem sonans* with the name of the protestant.

Exibit R–4 was taken from the box for spoiled ballots and the same is rejected, not only on that ground, but also because the name of the protestant appears in the line for Vice-President.

Exhibit D–49 also came from the box for spoiled ballots. Besides, the name of the protestee does not appear therein. This ballot is hereby rejected.

Exhibit D–2, D–3, D–4 and D–9 to D–13 are objected to on the ground that the same were prepared by one person only. Upon examination of these ballots, we found that Exhibit D–2 was prepared by a person different from the one who prepared the rest of the ballots objected to. The same is hereby admitted. Exhibits D–3 and D–4 are found to have been prepared by one and the same person and the same are hereby rejected. Exhibits D–9 to D–13 were also prepared by the same person. Consequently, the same are rejected.

Exhibits D–18 and D–19 were prepared by the same person, and they are, therefore, rejected.

Exhibits D–30 and D–31 were likewise prepared by the same person and they are rejected.

Exhibit D–37 is admitted because the name of the protestee is written just below the words "For Representaive." This kind of ballot has already been accepted by the Tribunal in another part of this decision.

In Exhibit D–40 the name of the protestee is written twice, once just above the words "For Representative" in the column of Liberal Party candidates, and again in the column intended for the candidates of the Liberal Party Avelino Wing. This ballot is admitted.

For the same reason that ballot Exhibit D–40 has been admitted, ballot Exhibit D–41 is also admitted.

In Exhibit D–42 the name of the protestee appears immediately below the words "Elpidio Quirino". The intention of the voter to vote for the protestee is not manifest. As in previous cases in other parts of this decision, this ballot is rejected.

In Exhibits D–43, D–44, D–45, D–46 and D–47, the name of the protestee appears above the words "For Representative in the column intended for the candidates of the Liberal Party. These ballots are, therefore, admitted.

Summarizing, the votes obtained by the parties in this precinct are as follows:

Protestant—	
Ballots uncontested	2
Ballots contested but Admitted	1
Total	3
Protestee—	
Ballots uncontested	184
Ballots contested but admitted	8
Total	192

BOKOD

Precinct No. 6

In this precinct the protestant claims 32 ballots and the protestee claims 130 ballots, including 6 stray ballots. Of the 32 ballots of the protestant, 4 are objected to by the protestee, and of the 130 ballots of the protestee, 21 ballots are objected to by the protestant. The protestant claims two ballots of the protestee, namely, Exhibits D–9 and D–10.

Exhibits R–5 and R–6 are objected to on the ground that the name appearing thereon is not that of the protestant nor *idem sonans* with his name. In Exhibit R–5 the word appearing is "Mira" and in Exhibit R–6 the word "Mitara" which are *idem sonans* with the name of the protestant.

Exhibits R–7 and R–8 are objected to on the ground that there are dirts, apparently thumbmarks of the inspectors or electors. As earlier stated with reference to other ballots of this kind heretofore treated, these marks were not intentionally placed to mark or identify the ballot, but were accidentally imprinted thereon when the ballots were handled by both the elector and the inspectors. They are therefore, valid.

Exhibits D–1 to D–7 are objected to on the ground that the word appearing thereon are illegible or do not represent the name of the protestant. Upon examination of the ballots, we found that in Exhibit D–1 the word appearing is "Matinos" which is not that of the protestee and is, therefore, rejected; in Exhibit D–2 the word appearing is "Dines" which is *idem sonans* with the first name of the protestee and it is also in the proper space. This ballot is valid. In Exhibit D–3 the word appearing is "Molinas" which is *idem sonans* with the name of the protestee. In Exhibit D–4 the word appearing "Malntas" is *idem sonans* with the name of the protestee. In Exhibit D–5 the word is "Molintis". The intention of the voter to vote for the protestee is manifest. In Exhibit D–6 the word appearing

is "Molintos" which is *idem sonans* with the name of the protestee. In Exhibit D–7 the word is "Molinlas". The elector simply forgot to cross the "t". These ballots, Exhibits D–2 to D–7, are admitted.

Exhibit D–8 is objected to on the ground that the elector used both the block voting and the individual voting. We have already ruled that where the elector votes for the entire ticket and at the same time votes for an individual candidate, the vote for the individual candidate prevails. This ballot is valid for the protestee.

The protestant objects to Exhibits D–9 and D–10 on the ground that the voter first wrote the name of Mitra and later on either erased the same or superimposed the name with that of Molintas. The protestant claims these ballots for himself. This objection and claim of the protestant is without merit. It is apparent that the elector could hardly write the name of the protestee and after making some mistakes, he tried to repeat his letters, but there is nothing in these ballots to show that the elector ever intended to vote for Mitra. These ballots are, therefore, valid for the protestee.

Exhibit D–11 is objected to on the ground that it is marked because the word "Liberal" is written upside down in the rectangle for block voting. This is no mark at all and this ballot is valid for the protestee.

Exhibit D–12 is objected to on the ground that the name of the protestee is written in bolder or heavier letters. It can be seen from this ballot, however, that the elector used indelible pencil and must have placed the pencil in his mouth in order to write clearly the name of Molintas. This is no mark and the ballot is valid.

Exhibit D–13 is valid. The names "Elpidio Quirino" and "Fernando Lopez" appearing on this ballot are no identifying marks at all.

Exhibits D–14 and D–45 are objected to on the ground that the names appearing thereon are illegible. In Exhibit D–14 the word appearing is "Moluntas" and in Exhibit D–45 the word is "Molinlas". The intention of the elector to vote for Molintas is very clear. These ballots are admitted for the protestee.

In Exhibit D–46 the name "Molintas" appears just below the name "Leonardo Rilloraza", and as in previous ballots of this kind, the same is admitted. In Exhibit D–47 the name of the protestee appears above the words "Vice-President"; in Exhibit D–48 the name of the protestee appears immediately below the words "Liberal Party"; in Exhibit D–49 the name is on the line for vice-president; in Exhibit D–50 the name of the protestee is written on the line for president. As previously ruled, in ballots similar to these, the same are rejected. In Exhibit D–51

the name of the protestee is written just above the words "For representative". We do not need to repeat that we have already admitted ballots of this kind and, therefore, the same is admitted.

Summarizing, the votes obtained by the parties in this precinct are as follows:

Protestant—	
Ballots uncontested	28
Ballots contested but admitted	4
Total	32
Protestee—	
Ballots uncontested	109
Ballots contested but admitted	16
Total	125

BUGUIAS

Precinct No. 1

In this precinct the protestant claims 22 ballots; and the protestee claims 89 ballots, including one stray ballot. Of the 22 ballots of the protestant, 10 are objected to by the protestee. Of the ballots claimed by the protestee, 9 are objected to by the protestant.

Exhibits R–2 and R–3 are objected to on the ground that these ballot were written by one and the same person Upon examination, this objection was found to be true. These ballots are rejected.

Exhibits R–4 and R–5 are objected to on the ground that they are written by one and the same person. On examination of these ballots, we found that they were written by different persons. They are admitted.

Exhibits R–8 and R–9 are objected to for the same reason as Exhibits R–4 and R–5; likewise, Exhibits R–10 and R–11 are objected to on the same ground. A careful examination of these ballots show that each one of them was prepared by different persons and no two of them have been prepared by one person.

The objection to Exhibit R–13 is that the word "Mitral" does not represent the name of the protestant. This is however *idem sonans* with his name and it is, therefore, admitted.

The objection to Exhibit R–14 is that the word "Liberal" appears in the space intended for block voting. The same is admitted. The name of the protestant clearly appears on the ballot, in the proper space.

The name of the protestee in Exhibit D–2 appears on the line for president and the same is, therefore, rejected.

Exhibit D–3 is objected to on the ground that it is marked because there are erasures and that the name of the protestee does not appear in the proper space. The

erasures are no mark at all, because they are due to the incompetency of the elector and he erased the letters when he made a mistake in writing the word "Liberal". And when he discovered that he wrote the letter "D" followed by the name "Molintas" on the line for president, he erased them and then wrote the name "Molintas" on the space above the words "For Representative". This is not a marked ballot. The same is admitted.

Exhibit D–4 is objected to on the ground that it is a marked ballot. There are no marks at all. The same is admitted.

In Exhibit D–6 the name of the protestee appears immediately above the words "For Representative" in the column intended for the candidates of the Liberal Party Avelino Wing. This ballot is valid as were other ballots of the same kind.

In Exhibit D–7 the objection refers to the check sign after the words "Quirino Liberal" and "Molintas". These are no marks at all. The elector simply placed the signs perhaps to indicate once more that his vote was all right.

Exhibit D–8 is objected to on the ground that there is no political party voted and the word appearing for representative is not the name of the protestee. The said word reads "D. Nlntas" which is *idem sonans* with the name of the protestee. The same is hereby admitted.

The objection to Exhibit D–9 is the same as the objection to Exhibit D–6 and other ballots where the name of the protestee appears just above the words "For Representative". This is a valid ballot.

Exhibit D–11 is objected to because the elector wrote the letters "L. P." and "N. P.", respectively, after the names of the candidates he voted for. These are no marks at all because it is apparent that the elector wanted to identify that one candidate belonged to the Liberal Party and the other to the Nacionalista Party. This ballot is valid.

Exhibit D–12 is admitted because the word appearing thereon is "Mabnitas" which is *idem sonans* with the name of the protestee.

Summarizing, the votes obtained by the parties in this precinct are as follows:

Protestant—	
Ballots uncontested	12
Ballots contested but admitted	8
Total	20
Protestee—	
Ballots uncontested	80
Ballots contested but admitted	8
Total	88

ITOGON

Precinct No. 1

In this precinct the protestant claims 10 ballots and the protestee claims 223 ballots including 3 stray ballots. None of the ballots claimed by the protestant is objected to by the protestee; and of the ballots claimed by the protestee, 23 ballots are objected to by the protestant.

Exhibit D–1 is objected to on the ground that the same is written by two persons. An examination of the ballot shows that this ballot was really prepared by two hands. The same is rejected.

Exhibit D–2 is objected to on the ground that it was prepared by two persons. It appears that the words Laurel, Briones and Molintas were written by one person who really voted for these candidates, but some criminal hands tampered this ballot later on and wrote the names Recto and Legarda. We can not penalize the elector for the criminal act of another person. Consequently, this ballot is valid.

Exhibit D–3 is objected to on the same ground as in Exhibit D–2. What happened to Exhibit D–2 happened to Exhibit D–3. The same is admitted.

Exhibit D–4 is objected to on the ground that it has been prepared by two or more persons. The objection is well taken and this ballot is hereby rejected.

Exhibits D–5, D–6, D–7 and D–8 are objected to on the ground that each of these ballots was prepared by two different persons. Like in Exhibit D–2, the words J. P. Laurel, Briones and Molintas were written by the elector first, and some criminal hand added later on the names of Recto and Legarda. These ballots are admitted.

Exhibit D–9 is objected to as prepared by more than one person. It really appears that the words Jose P. Laurel and Manuel Briones were written by one person and the names Molintas, Recto, Legarda and Alonto were added later by another person. Consequently, this ballot is rejected.

Exhibits D–10, D–11, D–12, and D–13 are objected to on the ground that each of these ballots was prepared by more than one person. Exhibit D–10 is admitted on the same ground that Exhibit D–2 was admitted, because the name of the protestee together with the names of Briones and Laurel were written by one person, and the names of Recto and Legarda were added later on. Exhibit D–11 is admitted. The names Jose P. Laurel and D. Molintas were written by the elector himself and somebody else added the words Briones, Recto, Legarda and Alonto. The person who wrote Laurel and Molintas could hardly write. On the other hand the person who wrote Briones, Recto, Legarda and Alonto writes very well. This ballot is

valid. In Exhibit D–12 the names Laurel, Briones and Molintas were written first by the elector, and another person added later the names Recto, Legarda and Vera. This ballot is valid. Exhibit D–13 is the same as Exhibit D–12 with the only difference that the name added is only Recto. This is valid.

In Exhibit D–14 the name of the protestee appears immediately below the words "For Representative". This ballot is valid.

Exhibit D–17 is objected to on the ground that there appears the word "Nacionalista" in the space for senators. Apparently the elector wanted to vote for all the candidates of the Nacionalista Party. This ballot is not marked and the same is valid.

In Exhibit D–18 the objection is that it is marked with a star on the first line for senators, even touching the letters of the name "Legarda". There is really no reason why the elector should put a star on his ballot unless he really wanted to identify his vote. This is one of the rare marks which this Tribunal will consider sufficient to invalidate the ballot. This ballot is rejected.

The objection to Exhibits D–20, D–21, and D–22 is that the name appearing thereon is not that of the protestee or does not have a sound similar to the name of the protestee. In Exhibit D–20 the name appearing is "Malanilas"; in Exhibit D–21 the word is "Maantas"; and in Exhibit D–22 the word is "Maintas", all of which are *idem sonans* with the name of the protestee. These three ballots are admitted.

In Exhibit D–23 the word "Liberal" written upside down does not constitute an identifying mark. This ballot is admitted.

In Exhibits D–30 and D–31 the name of the protestee is written between the words "Fernando Lopez" and "For Representative". As in other ballots of similar nature, these ballots are hereby admitted.

In Exhibit D–32 the name of the protestee appears between the name "Elpidio Quirino" and the words "For Vice-President". As in previous ballots of this kind, this ballot is rejected.

Summarizing, the votes obtained by the parties in this precinct are as follows:

Protestant—	
Ballots uncontested	10
Ballots contested but Admitted	0
Total	10
Protestee—	
Ballots uncontested	200
Ballots contested but Admitted	18
Total	218

ITOGON

Precinct No. 6

In this precinct the protestant does not have a single ballot from the box for valid ballots, and neither does he claim any ballot from the box for spoiled ballots. The protestee claims 161 ballots from the box for valid ballots and nine ballots from the box for spoiled ballots. Of the ballots claimed by the protestee from the box for valid ballots, 133 are objected to by the protestant, namely, Exhibits D–1 to D–133. All the ballots claimed by the protestee from the box for spoiled ballots are objected to by the protestant.

The objection to ballots Exhibits D–1 to D–133 is that the word "Nacionalista" was written diagonally across the space for senators on all these ballots except in ballots Exhibits D–12 and D–70 where the word "Liberal" was written diagonally across the space for senators. These words Liberal and Nacionalista do not constitute identifying marks because evidently the elector wanted to signify that he was voting for the candidates of the Nacionalista Party for senators where he wrote the word Nacionalista, and that he was voting for the Liberal Party candidates when he wrote the word Liberal. These ballots are therefore admitted.

Exhibits D–134 to D–142 are rejected because they are marked "Spoiled" at the back, showing that they were really spoiled and substituted with other ballots.

Summarizing the votes obtained by the parties in this precinct are as follows:

Protestant—	
Ballots uncontested	00
Ballots contested but Admitted	00
Total	00
Protestee—	
Ballots uncontested	28
Ballots contested but Admitted	133
Total	161

ITOGON

Precinct No. 14

In this precinct the protestant claims 2 ballots; while the protestee claims 246 ballots including 6 stray ballots from the box for valid ballots, and 3 ballots from the box for spoiled ballots. Of the 2 ballots claimed by the protestant, one ballot Exhibit R–1, is objected to and of the ballots claimed by the protestee from the box for valid ballots, 89 ballots are objected to by the protestant. The three ballots from the red box are all objected to.

Exhibit R–1 is objected to on the ground that there are fingerprint marks thereon. The fingerprints were apparently caused by the handling of the ballot and not for the purpose of identifying the same. This ballot is admitted.

Exhibits D–7, D–8 and D–9 are objected to on the ground that they are marked because the coupons on the top thereof have not been detached. These ballots are valid. We should not penalize the elector for mistakes committed by the election officers. In the records of this case it appears that one of the inspectors testified that the inspectors really did not know that the coupons should be detached before dropping the ballots in the ballot box.

"Section 132 of the Election Code requires that inspector or poll clerk to whom a ballot is handed after it is filled to verify and remove its number immediately before it is deposited in the white box, in the presence and view of the voter. This provision of law, while mandatory as regards the duty of the election officer to detach the coupon, does not contemplate disfranchisement of the elector by the failure of the election officer to comply with his duty. As stated in the case of Lino Luna *vs.* Rodriguez, "The rules and regulations for the conduct of elections are mandatory before the election, but when it is sought to enforce them after the elections, they are held to be directory only, if that is possible, especially where, if they are held to be mandatory, innocent voters will be deprived of their votes without any fault on their part." Following this doctrine, it was held in Lucero *vs.* de Guzman that the duty of detaching the coupon is placed by law on the election officials and the circumstance that the coupon was undetached at the time the ballot was deposited will not justify the court in depriving the elector of the franchise by rejecting the ballot. After referring to the pertinent provisions of law, the Supreme Court said:

"No words could be more explicit. The prohibition against the placing of a ballot in the box with the coupon still upon it is express. Nevertheless, it will be noted that this provision of the law has reference to an act which is to be done by the chairman of the election board after the ticket has left the hands of the voter, and at a time when the voter has lost all control over it. It is a well-settled rule that a voter shall not be deprived of the franchise by the mere failure of the election officer to comply with some provision or another of the statute relating to acts to be done exclusively by the officer. If this ballot (Exhibit 11–J–16), unexceptionable in all respects except in the circumstance that the numbered coupon is still attached, should be held invalid, the result would be that voters might be easily disfranchised by a mere fraudulent trick on the part of the Chairman, or even by an innocent oversight on his part."

In Angeles *vs.* Rodriguez it appears that the detachable numbers were not removed from more than one thousand ballots before these were deposited in the white box. The Supreme Court said:

"The irregularity in question seems to have been due to a misconception of the law on the part of the election inspectors, and to have been committed irrespective of whether the voters were for Angeles or Rodriguez. The voters were themselves in no wise

at fault. Applying the law as heretofore interpreted, and noting no oppository facts, the challenged ballots were properly counted." (Laurel on Elections, 2d Ed., pp. 228–229.)

Exhibits D–10 and D–11 are objected to on the ground that the coupons on top of the ballots are not detached and that the said ballots were prepared by one and the same person. Regarding the fact that the coupons were not detached, we have already ruled that this does not invalidate the vote, but upon examination of the ballots, it was found that they have been prepared by one person. These two ballots are, therefore, rejected.

Exhibits D–12, D–13, D–16, D–68, D–70 and D–72. After a thorough examination of these ballots, the Tribunal is of the opinion that each of these ballots was prepared by different persons; therefore they are admitted.

Exhibits D–21 and D–22 are objected to on the ground that the coupons have not been detached and that they were prepared by one and the same person. Regarding the undetached coupons, we have already ruled that this does not invalidate the ballot. But we have found that these ballots were really prepared by one and the same person and therefore they are rejected.

As we have already ruled that the fact that the coupons in many of the ballots in this precinct were not detached before they were dropped in the ballot box does not constitute a mark or sufficient ground to invalidate the ballot and whenever such objection is interposed in other ballots which may be considered later, it shall be understood that that objection is overruled without ruling further on particular ballots objected to on that ground and if the ballots do not have any other defect, the same will be admitted.

Exhibits D–69, D–71 and D–77 are objected to on the ground that the same were written by one and the same person. The objection is not well taken and the same are hereby admitted.

Exhibits D–26 and D–27 are objected to as written by the same person. Upon examination of these ballots, it was found that the objection is not tenable. They are admitted.

We also admit Exhibits D–38 and D–39 because we have found that each of these ballots was prepared by different persons.

We likewise admit Exhibits D–42 and D–43 because the person who wrote Exhibit D–42 is different from the one who prepared Exhibit D–43.

Exhibits D–46 to D–50 are admitted on the ground that each of these ballots was prepared by different persons and the objection thereto is not well taken.

Exhibit D–51 is objected to on the ground that it is marked by the words Nacionalista Party written diagonally

from the seventh line of the space for senators and ending in the line for Vice-President. This does not constitute a mark as already decided in similar ballots in this case.

Exhibits D–52 to D–55 are objected to as having been prepared by one person. We find that these ballots were prepared by different persons. The objection is not well taken and they are admitted.

Exhibits D–78, D–85, D–91, D–94 and D–99 are admitted because the words "N. Party" written across the space for senators in Exhibits D–78 and D–85; the initials "N. P." in Exhibit D–91; the word "Nacionalista" written on the first line for senators in Exhibit D–94; and the words "N. Party" written diagonally in the space for senators in Exhibit D–99, do not constitute marks as has already been ruled in ballots of the same kind. They are therefore admitted.

In Exhibit D–102 the words "Na. Party" are written diagonally across the space for senators; in Exhibit D–116 the words "N. Party" are written diagonally across the space for senators and so with Exhibits D–117, D–119, D–122, D–127, D–128 and D–129. As we have already stated, these words do not constitute identifying marks and these ballots are admitted.

Exhibit D–136 is objected to on the ground that the name written is not that of the protestee which to this Tribunal reads "Mointas". This is *idem sonans* with the name of the protestee and the same is admitted.

In Exhibits D–137, D–142 and D–155 the words "N. Party" appear diagonally written across the space for senators. As already stated with regard to ballots of this kind, these ballots are not considered marked. The same are admitted.

In Exhibits D–160 the word appearing in the space for representative is "Molustos" which is idem sonans with the name of the protestee, and the same is hereby admitted.

Exhibit D–161 is objected to because it contains the words "N. Party" written diagonally across the space for senators, which is the same case in Exhibits D–163 and D–164. All these ballots are admitted.

In Exhibit D–167 the word "Molilas" appears in the space for representative which is *idem sonans* with the name of the protestee. This ballot is admitted.

In Exhibits D–171, D–173 and D–174 the words "N. Party" appear written diagonally across the space for senators; in Exhibit D–176 the words appearing are "Nacionalista Party"; in Exhibit D–178 the initials "Q. L. P."; in Exhibit D–181, the words "N. Pari" are written vertically across the space for senators; in Exhibit D–185 the words "N. Party", and the same appear in Exhibit D–

191. These words do not constitute identification marks, and all these ballots are admitted as valid.

Exhibits D–198, D–199, D–202, D–203, D–125 and D–216 are admitted because they are not written by only one person but by different persons. The objection is not well taken.

In Exhibit D–206 the word "only" after the name "Molintas" is not an identifying mark. This simply shows that the elector wanted to vote for Molintas alone and no more. This ballot is valid.

In Exhibits D–209 and D–217 the word "Nacionalista" is written in the first ballot, vertically across the space for senators; and in the second, diagonally across said space. These are not identifying marks and these ballots are valid.

Exhibit D–219 does not contain any mark except perhaps the erasure in the space for president where, apparently, the elector wrote the word "Lopez" and later erased the same. The ballot is valid.

In Exhibit D–220 the word "Nacionalista" is written across the space for senators; in Exhibit D–224 the words "N. Party" are written diagonally across the space for senators; in Exhibit D–227 "Q. L. P." is written on the first line for senators; on Exhibit D–231 the words "Nacionalista Party" are written diagonally across the space for senators; in Exhibit D–233 the words "N. Party" are written diagonally across the space for senators; the same appears in Exhibits D–235 and D–236. These ballots are valid.

Exhibit D–237 is objected to on the ground that it has been prepared by more than one person. We can not tell what names appeared first and what names were added later. The same is rejected.

Exhibit D–240 is admitted because the line drawn diagonally across the space for senators is no mark at all. It is evident that after the elector wrote "Abada" on the first line for senators, he did not want to vote for any other candidate and drew a line on that space. Ballot is admitted.

Exhibits D–243 and D–244 where the words "N. Party" are written diagonally across the space for senators are valid, as already decided.

Exhibit R–1 is admitted because the marks on this ballot were not placed to identify the ballot but were accidentally placed thereon when the ballot was handled by the inspectors or by the elector himself.

Exhibit D–1 is rejected because the name of the protestee appears on the line for vice-president.

On the same ground as Exhibit D–1, Exhibit D–2 is rejected.

In Exhibit D–3, while the name appears on the third line for senators, the elector wanted to vote for Laurel followed by Briones and Molintas in the order that they should be written on the ballot. The intention of the voter to vote for these candidates is very manifest. It is therefore admitted.

Exhibits D–4 and D–5 are rejected because the name of the protestee appears on the space for vice-president.

Exhibit D–6 is also rejected for the same reason as Exhibits D–4 and D–5.

Exhibits D–7, D–8 and D–9 are ballots that came from the box for spoiled ballots. This Tribunal has consistently ruled that ballots found in the box for spoiled ballots are presumed to have really been spoiled and that another ballot was substituted. There is no evidence that these ballots were not substituted or that they were placed in the red box by mistake. For this reason, they are rejected.

Summarizing, the parties obtained in this precinct the following votes:

Protestant--	
Ballots uncontested	1
Ballots contested but Admitted	1
Total	2
Protestee—	
Ballots uncontested	157
Ballots contested but Admitted	79
Total	236

TUBA

Precinct No. 1

In this precinct, the protestant claims 106 ballots including 15 stray ballots from the box for valid ballots. The protestee claims 161 ballots including 6 stray ballots from the box for valid ballots. Of the ballots claimed by the protestant, 28 ballots are objected to by the protestee and of the ballots claimed by the protestee, 20 are objected to by the protestant.

Exhibits R–1 and R–2 are objected to on the ground that they are written by one and the same person. Upon examination of the same, it was found that the objection is not well taken. They are admitted.

Exhibit R–3 is objected to on the ground that the name appearing thereon is not that of the protestant. In the line for representative there appears "R. P. Mitra" which is the name of the protestant. This ballot is, therefore, admitted.

In Exhibit R–8 the check sign after the words "Macario Peralta, Jr.," is not a mark to identify the vote. This ballot is therefore valid.

Exhibit R–9 is objected to on the ground that the ballot is torn in the upper left hand corner. This ballot must have been accidentally torn. It is therefore admitted. (Section 149 of the Revised Election Code).

Exhibit R–13 is admitted because the objection to the effect that it has been written by two persons is not well founded. It is admitted.

Exhibit R–14 is admitted because the fact that the name "Quirino" appears in the space for block voting does not invalidate the vote. The name of the protestant is clearly written in the proper space.

Exhibit R–17 is admitted. The ink spots in the printed word "President" are not considered marks and do not invalidate this vote.

Exhibit R–18 is admitted. The ink spots on the sides of the ballot are not identifying marks.

Exhibit R–20 is objected to as written by two persons. Upon examination of this ballot it has been found that it was prepared by only one person. The same is admitted.

Exhibit R–21 is objected to on the ground that the elector first wrote "Liberal" upside down and later on crossed it. This is no identifying mark and this ballot is admitted.

Exhibit R–22 is admitted. The fact that the elector crossed the word "Mitra" first and later on wrote "Ramon P. Mitra" des not show that the elector intended to mark his ballot.

For the same reason that Exhibit R–22 is admitted, Exhibit R–23 is admitted. The fact that the voter crossed the word "Mitra" and later on he wrote the same name "Mitra" does not invalidate the vote.

Exhibit R–24 is admitted because the name of the protestant appears just below the words "For Representative".

Exhibit R–25, where the name of the protestant appears immediately below the words "Liberal Party"; Exhibit R–26, where the name of the protestant appears on the line for president; Exhibit R–27 where the words "Nacionalista Party" appear written upside down, are rejected.

In Exhibit R–28 what appears is "Milra" which is *idem sonans* with the name of the protestant and is, therefore, admitted.

Exhibit R–29 is admitted because the name of the protestant appears immediately above the words "For President"; and Exhibit R–30 is also admitted because the name of the protestant appears immediately above the words "For Representative".

Exhibit R–31 is admitted on the same ground.

Exhibit R–32 is rejected because the name of the protestant appears immediately below the words "For Representative".

Exhibit R–34 is admitted because the name of the protestant appears immediately below the words "For Representative".

Exhibit R–35 is rejected because the name of the protestant appears in the space for block voting.

Exhibit R–37 is rejected because the name of the protestant appears immediately below the words "Liberal Party".

In Exhibit R–38 the name of the protestant appears immediately below the words "For Representative". It is admitted.

In Exhibit R–39, the name of the protestant appears in the space for block voting. The same is rejected.

Exhibits D–1 and D–2 are objected to on the ground that they were prepared by one and the same person. The writings on these ballots show that they were really prepared by the same person. Consequently, they are rejected.

Exhibits D–3 and D–4 are objected to on the same ground, but we found that Exhibit D–3 was prepared by one person and Exhibit D–4 by another. They are, therefore, admitted.

Exhibits D–5 and D–6; and Exhibits D–9 and D–10 are objected to on the ground that each group was prepared by one and the same person. The objection is well taken and these ballots are rejected.

Exhibits D–11 is objected to on the ground that the person who wrote the word "Liberal" in the space for block voting is different from the one who wrote "Molintas" in the space for representative. We believe that the word "Liberal" was first written on the ballot and somebody who happened to take hold of this ballot wrote the name of Molintas. It is therefore rejected.

Exhibit D–12 is objected on the ground that there are crosses on the name "Ramon P. Mitra" hence, the same is marked. In this ballot the elector first wrote "Ramon P. Mitra" and apparently changed his mind and crossed same. He then wrote below the word Molintas. This ballot is valid for the protestee.

Exhibits D–13, D–14 and D–15 are objected to on the ground that the voter did not vote for any party or for any individual candidate. The name "Molintas" is clearly written on these ballots and the same are hereby admitted.

In Exhibit D–16 the name of "Mitra" appears just below the words "For Representative" in the column intended for candidates of the Liberal Party, and the name of "Molintas" appears in the proper space for representa-

tive, we can not determine for whom the elector wanted, to vote. This ballot is rejected.

In Exhibit D–17 the name "Molintas" appears immediately above the words "For Representative". This ballot is valid for the protestee.

In Exhibit D–19, the name "Molintas" is written in the space for block voting; in Exhibit D–20 it is on the line for president; in Exhibits D–21 and D–22 the name is written just below the words "Liberal Party". Consequently, these ballots are rejected.

Exhibit D–18 is objected to on the ground that the name written is not that of the protestee nor is it *idem sonans* with his name. The name appearing is "Naln". The same is hereby rejected.

Summarizing, the parties obtained in this precinct the following votes:

Protestant—	
Ballots uncontested	78
Ballots contested but Admitted	20
Total	98
Protestee—	
Ballots uncontested	141
Ballots contested but Admitted	4
Total	145

TUBA

Precinct No. 2

In this precinct the protestant claims 17 ballots from the box for valid ballots and 2 ballots from the box for spoiled ballots; and the protestee claims 212 ballots including 6 stray ballots from the box for valid ballots and 4 from the box for spoiled ballots. Of the ballots claimed by the protestant from the box for valid ballots, none is objected to by the protestee and the two ballots claimed by him from the box for spoiled ballots are both objected to by the protestee. Of the ballots claimed by the protestee from the box for valid ballots, 18 are objected to by the protestant and all the 4 ballots claimed by the protestee from the box for spoiled ballots are objected to by the protestant.

Exhibit D–1 is rejected because this ballot is written by two persons.

Exhibit D–2 is rejected because it was prepared by two persons.

Exhibits D–3, D–4, D–5 and D–6 are rejected because they were prepared by one and the same person.

Exhibits D–11, D–16, D–17, D–22 and D–23 are rejected because they were prepared by one and the same person.

Exhibit D–24 is admitted because the objection that it was written by two persons is not well taken.

Exhibits D–107, D–108 and D–109 are admitted because on these ballots the name of the protestee is written immediately above the words "For Representative" in the column intended for candidates of the liberal party.

Exhibits D–110, D–111 and D–112 are rejected because in Exhibit D–110 and D–111 the name "Molintas" is written immediately below the words "Liberal Party" and in Exhibit D–112 his name appears on the line for vice-president.

Exhibits D–107, (RB), D–108 (RB), D–109 (RB) and D–110 (RB) are rejected because they came from the spoiled ballot box and there is no evidence to show that they were not changed with other ballots, and the presumption is that ballots found in the spoiled ballot box are invalid. Moreover, the name of the protestee appearing in these ballots is not written in the proper space.

Exhibits R–1 (RB) and R–2 (RB) are rejected for the same reason as above-stated.

Summarizing, the parties obtained in this precinct the following votes:

Protestant—	
Ballots uncontested	17
Ballots contested but Admitted	00
Total	17
Protestee—	
Ballots uncontested	194
Ballots contested but Admitted	4
Total	198

TUBA

Precinct No. 5

In this precinct the protestant claims 187 ballots and the protestee claims 11 ballots. All the ballots claimed by the protestant are objected to by the protestee. And of the ballots claimed by the protestee, 4 are objected to by the protestant.

This Tribunal found that the secrecy of the box for valid ballots in this precinct has been violated and many of the ballots tampered with as shown by erasures in many ballots where the candidate's name under "Representative" was substituted by one or the other. There is no direct evidence of tampering much less is there evidence as to who tampered with these ballots. With this as a basis, this Tribunal accepted the ballots as valid or rejected them as void after a very careful examination as to the real intention of the elector. Where the Tribunal could still

make out the name which was erased, the Tribunal decided to adjudicate the ballot to that candidate, and not to the one whose name is placed over the erased name. But where the name that has been erased could not be distinguished and there is no way of finding out whose name it is, the Tribunal has decided to declare such ballot as void and not to adjudicate the same in favor of any candidate. With the foregoing as a guiding rule, the Tribunal has adjudicated the ballots of this precinct in the manner and form hereinbelow indicated.

Exhibits R–1 and R–2 are objected to on the ground that these ballots were prepared by one and the same person. On these ballots a name was first written and then erased, and the name "Ramon Mitra" was written over the erasure. We can not determine whose name was erased. Moreover, the name of the protestant in these two ballots was written by one and the same person. These ballots are therefore rejected.

Exhibits R–3, R–4, R–8, R–30, R–32, R–36, R–38, R–45, R–68, R–74, R–75, R–77, R–103, R–113, R–123, R–135, R–145, R–153, R–154, R–156, R–157, R–160, R–162, R–164, and R–179 are admitted because the name of the protestant is clearly written on these ballots and these have not been tampered with.

Exhibits R–5, R–6, R–7, R–9, R–13, R–15, R–18, R–19, R–21, R–22, R–23, R–25, R–26, R–27, R–28, R–29, R–31, R–34, R–35, R–37, R–39, R–41, R–42, R–44, R–46, R–47, R–48, R–49, R–51, R–52, R–54, R–55, R–56, R–58, R–59, R–61, R–62, R–64, R–69, R–73, R–76, R–82, R–83, R–85, R–87, R–88, R–89, R–90, R–97, R–98, R–100, R–101, R–109, R–115, R–116, R–117, R–119, R–120, R–121, R–122, R–124, R–125, R–126, R–129, R–131, R–134, R–138, R–141, R–146, R–147, R–148, R–149, R–150, R–151, R–152, R–158, R–161, R–163, R–165, R–166, R–168, R–169, R–170, R–171, R–172, R–173, R–174, R–176, R–180, R–183, R–184, R–185, R–186, and R–187 are all rejected on the ground that there was a name first written on these ballots. Said name was erased and the name of the protestant was written on the place where the name was erased. As we can not decipher whose name was first written in the ballot, we can not adjudicate these ballots in favor of any candidate. Consequently, the same are hereby rejected.

Exhibits R–10, R–11, R–12, R–14, R–16, R–17, R–20, R–24, R–33, R–40, R–43, R–50, R–53, R–57, R–60, R–63, R–65, R–66, R–67, R–70, R–71, R–72, R–78, R–79, R–80, R–81, R–84, R–86, R–91, R–92, R–93, R–94, R–95, R–96, R–99, R–102, R–104, R–105, R–106, R–107, R–108, R–110, R–111, R–112, R–114, R–118, R–127, R–128, R–130, R–132, R–133, R–136, R–137, R–139, R–140, R–142, R–143, R–144,

R–155, R–159, R–167, R–175, R–177, R–178, R–181 and R–182 are all adjudicated in favor of the protestee because the name "Molintas" was first written on these ballots and then erased and later on the name of the protestant was written. These ballots are therefore adjudicated in favor of the protestee.

The objections to the foregoing groups of ballots, Exhibits R–1 to R–46, R–47 to R–88, R–89 to R–104, R–105 to R–147, R–148 to R–149, R–150 to R–163, R–164 to R–187, that each group was prepared by one and the same person, have been taken into consideration in the adjudication of these ballots. Where the ballots are adjudicated to the protestant, it has been found that the objections that they were prepared by one and the same person has been found by the Tribunal not well founded. But as stated in another part of this decision, where it appears on the ballots that a name was formerly written thereon, then erased and another name written over the erasure, the Tribunal invariably rejected the ballots if it could not tell even after a conscientious examination as to whose name was formerly written on the ballot. But where we could still determine that the name of the protestee was erased and superimposed with the name of the protestant, we invariably adjudicated the ballots to the protestee.

Exhibit D–1 is objected to on the ground that it is written by more than one person. The objection is well taken and this ballot is rejected.

Exhibit D–2 is admitted because the name appearing thereon first was "D. Molintas" and somebody tried to reform the name by making it appear that it was Mitra, but this Tribunal is convinced that the first name was Molintas. As a matter of fact, the letter "D" is still there and was never reformed or erased.

In Exhibit D–3 the name of Molintas is clearly written. This ballot is adjudicated in his favor.

Exhibit D–4 is rejected on the ground that it may be read either for Mitra or for Molintas.

Summarizing, the parties obtained in this precinct the following votes:

Protestant—Balots uncontested	0
Ballots contested but Admitted	25
Total	25
Protestee—Ballots uncontested	7
Ballots contested but Admitted	2
Ballots claimed by protestant but adjudicated to protestee	66
Total	75

BAGUIO

Precinct No. 25

In this precinct the protestant claims 72 ballots from the box for valid ballots and one ballot from the box for spoiled ballots, while the protestee claims 111 ballots including 16 stray ballots from the box for valid ballots and 2 ballots from the box for spoiled ballots. Of the ballots claimed by the protestant, 28 ballots are objected to by the protestee, including the one ballot from the box for spoiled ballots. Of the ballots claimed by the protestee, 74 are objected to by the protestant, including the 2 ballots that came from the box for spoiled ballots. In this precinct, some ballots claimed by the protestee were adjudicated by this Tribunal to the protestant so that the total number of votes of the protestant shall be increased by the number of ballots so adjudicated.

Exhibit R–1 is rejected because it was prepared by more than one person.

Exhibits R–2 and R–3 are admitted because each of these ballots was prepared by different persons and the objection thereto is not well taken.

Exhibits R–4, R–6, and R–7 are objected to on the ground that each of these ballots was prepared by more than one person. The objection is well founded and these ballots are rejected.

Exhibit R–8 is admitted because the same was prepared by only one person, contrary to the objection that said ballot was prepared by two persons.

Exhibit R–9 is objected to on the ground that the name "Mitra" appearing twice in said ballot was written by a person other than the one who wrote the name "Liberal" on the space intended for block voting. The objection is well taken and the ballot is rejected.

Exhibit R–10 is also rejected on the same ground as Exhibit R–9.

On the same ground, Exhibit R–12 is also rejected.

Exhibit R–13 is also rejected on the ground that it was prepared by two persons. The word "Mitra" was written by a person other than the one who wrote "Liberal" in the space intended for block voting.

Exhibit R–14 is objected to on the ground that it was prepared by more than one person. The same is admitted because although the persons who wrote "Nacionalista" in the space for block voting is different from the one who wrote "Laurel", "Lopez", and "Mitra" in their proper spaces, this Tribunal is of the opinion that the latter names were first written on the ballot and later another person wrote the word "Nacionalista". The intention of the elector to vote for the protestant should not be defeated by an illegal act of a third person.

For the same reason that Exhibit R–14 is admitted, Exhibit R–15 is admitted, because the word "Mitra" appearing in the line for representative must have been written first by the elector, and later somebody wrote the word "Nacionalista" in the space for block voting.

Exhibit R–17 is rejected on the ground that the same was prepared by two persons.

Exhibit R–18 is objected to on the same ground. Moreover, on this ballot the name "Mitra" was written twice. It is therefore rejected.

Exhibit R–19 is rejected because it was prepared by two persons. It is clear that the word "Liberal" was written by the elector and the name "Mitra" was written later.

Exhibit R–20 is rejected because it was prepared by two persons. Moreover, we believe that the word "Nacionalista" in the space for block voting was written by the elector and then the names "Laurel" and "Mitra" were added.

Exhibit R–21 is rejected on the same ground as in Exhibit R–20. The word "Nacionalista" was written first and later the name "Mitra" was added.

Exhibit R–22 is rejected because it was written by two persons. The words "Quirino Liberal Party" were apparently written by the elector and another person wrote later the name "Mitra" in the space for representative.

Exhibit R–23 is rejected because it is clear that the word "Nacionalista" was written by the elector and the name "Mitra" was added later by a person other than the elector.

Exhibit R–26 is rejected on the ground that this was prepared by two hands. The word "Liberal" was written by one person and the name "Mitra" was written by another person.

Exhibit R–27 is admitted. This ballot was not prepared by two hands.

Exhibit R–28 is rejected because the person who wrote the word "Liberal" is different from the person who wrote the name of the protestant twice on this ballot. Moreover, the name of the protestant is written over an erasure just below the words "For Representative", but we can not discern as to what name was erased. Following the rule heretofore set, this ballot is rejected.

Exhibit R–29 is rejected because apparently there is a name written just below the words "For Representative" and it appears that the elector really wanted to vote for that candidate, but this name was crossed and obliterated and then the word "Liberal" on the space intended for block voting and the names "Quirino" and "Mitra" were written. This is a tampered ballot.

Exhibit R–30 is rejected because this ballot was prepared by two persons.

Exhibit R–31 is rejected for the same reason that Exhibit R–30 was rejected.

Exhibit R–32 is rejected not only because it comes from the box for spoiled ballots but because the name "Mitra" on this ballot was written by a person other than the person who wrote the other names.

Exhibit D–1 is adjudicated in favor of the protestee because his name clearly appears on this ballot, although another person tried to write something which somehow blurred the second name of the protestee.

Exhibit D–2 and D–3 are admitted in favor of the protestant on the ground that his name was first written on this ballot and then erased and afterwards the name of the protestee was written over the erased name.

Exhibits D–4 and D–10 are rejected because each of these ballots was prepared by more than one person.

Exhibits D–11, D–12 and D–13 are admitted. The objection thereto that the same are marked by a number "3" in Exhibit D–11 at the back thereof; by an "X" enclosed in a circle in Exhibits D–12 and D–13 are not well taken. The marks do not identify the ballots. There is no evidence that these marks were placed by the electors themselves for the purpose of identifying their votes. It is possible that some other person might have placed these marks after the electors filled their ballots, as in the case of Precinct No. 5 of Tuba where the ballot box was apparently violated and the ballots have been tampered with as shown by the erasures of the names.

Exhibit D–14 is rejected because a name was first written on this ballot which was erased and the name of the protestee was written over the erased name but we can not discern what name was erased.

Exhibit D–15 is admitted for the protestee. The several lines placed by the elector in the columns for "Avelino Party Liberal Wing" and "Nacionalista Party" are not marks because apparently the elector wanted to indicate that he did not like to vote for the candidates for these parties, so he crossed the names.

Exhibit D–16 is admitted. The cross at the back of this ballot is no identifying mark at all.

On the same ground that Exhibits D–11, D–12 and D–13 were ruled by this Tribunal as not marked, Exhibits D–17, D–18, D–19 and D–20 are valid because the three "X" signs at the back of Exhibit D–17, the number "6" enclosed in a circle at the back of Exhibit D–18, the four lines at the back of Exhibit D–19, and the number "1" enclosed in a circle at the back of Exhibit D–20 do not constitute identifying marks.

Exhibit D–21 is rejected on the ground that the same was prepared by more than one person. The word "Liberal" on the space for black voting was written by one person and the name "Molintas" was written by another person.

Exhibit D–22 is admitted on the ground that the "check" marks at the back thereof do not constitute a mark and this has already been decided in Exhibits D–11, D–12 and D–13.

Exhibit D–23 is rejected on the ground that the same was prepared by more than one person. The person who wrote the word "Liberal" is not the same person who wrote the name "Molintas".

Exhibits D–24 and D–25 are objected to on the ground that they were written by the same person and that there are marks at the back thereof. These ballots are admitted. The Tribunal found that these ballots were prepared by different persons and, as already stated above, the crosses at the back thereof do not constitute identifying marks.

Exhibits D–26 and D–27 are admitted. The objection thereto that they were written by the same person is not well taken. These ballots were prepared by different persons and the other objection, that they are marked, because of the "check" signs in Exhibit D–26, and the lines in Exhibit D–27, do not constitute identifying marks.

Exhibits D–28 and D–29 are objected to on the ground that they are written by the same person and further that they are marked because of the stars of the back of Exhibit D–28 and a number "3" enclosed in a circle at the back of Exhibit D–29. These ballots were not prepared by one and the same person, and the marks are not to be taken as identifying marks, therefore, the same are admitted.

D–30 is rejected because a name was first written, then erased and protestee's name was written over the erasure. We cannot discern, however, whose name was erased.

Exhibit D–31 is admitted because while the elector did not write the name of the protestee clearly, his intention to vote for him is clear. What he wrote is "Mitomtoso".

Exhibit D–32 is rejected on the ground that a name was first written which was later erased and the name of the protestee was superimposed thereon. We can not, however, make out what name was erased. The same is hereby rejected.

Exhibits D–33 and D–34 are admitted because the name of the protestee appears just below the words "For Representative" and the objection that they were not written on the proper space is not well taken.

Exhibit D–35 is adjudicated in favor of the protestant. The name of the protestant was first written on this ballot

and then it was erased and the name of the protestee was later on written over the erased name. However, the name of the protestant can be discerned.

Exhibit D–36 is admitted. The name of "Molintas" was written by the elector and somebody tried to erase or reform it in order to make it appear as "Mitra" but he was not successful.

Exhibit D–37 is adjudicated in favor of the protestant. His name was first written on the ballot, then erased and the name of the protestee was written over the erasure.

Exhibits D–38 and D–39 are admitted. It appears that the name "Molintas" was written by the elector and there was an attempt to amend it by writing "Mitra" but as in previous ones he was not successful.

Exhibits D–40 to D–46 are adjudicated in favor of the protestant. In all these ballots the name of the protestant was first written by the elector, then the name was erased and the name of the protestee was written over this erased name. Following the ruling heretofore set and in view of that fact that the name of the protestant can be still discerned, these ballots are adjudicated in his favor.

Exhibits D–48, D–49 and D–50 are objected to on the ground that the electors underlined certain names of candidates for senator on these ballots. Apparently in each of these ballots the elector wanted to indicate by underlining these names that he wanted to vote for these candidates and his purpose was not to identify his ballot. These ballots are admitted.

Exhibit D–51 is rejected because it was written by two persons. The word "Liberal" was written by one person and the name "Molintas" was written by another person.

Exhibits D–52, D–56 and D–57 are objected to on the ground that they are written by one and the same person. Upon examination, it was found that they are written by different persons. They are, therefore, admitted.

Exhibits D–58 and D–59 are objected to on the ground that they are written by one and the same person. Upon examination of the ballots, we found that only one person wrote them. They are hereby rejected.

Exhibits D–60 and D–61 are adjudicated in favor of the protestant. His name was first written on the ballot which can still be discerned and which was erased and the name of the protestee was later written over the name of the protestant.

Exhibit D–62 is rejected on the ground that it was prepared by more than one person. The person who wrote the name "Liberal" is different from the person who wrote "Molintas". Moreover, there was a name that was erased just below the words "For Representative" but we can not

discern the same and the name of the protestee was written over this erased name.

Exhibit D–69 is adjudicated in favor of the protestant on the ground that his name was written first by the elector and then the name of the protestee was superimposed over the name of the protestant.

Exhibit D–70 is admitted because the name of the protestee appears just above the words "For Representative" in the column intended for candidates of the Liberal Party.

Exhibit D–71 is rejected because the name of the protestee is written just after the words "For President" and above the name "Elpidio Quirino".

Exhibits D–72, D–73, D–74, and D–75 are admitted. The name of the protestee appears just below the words "For Representatives" in all these ballots.

Exhibit D–76 is admitted because the name of the protestee appears between the name "Fernando Lopez" and the words "For Representative".

Exhibit D–77 is rejected because the name written is illegible.

Exhibits D–78 and D–79 are admitted. The name of the protestee in both ballots was written just below the words "For Representative".

Exhibits D–80, D–81, and D–82 are admitted for the same reason that Exhibits D–78 and D–79 are admitted.

Exhibit D–83 is rejected because the person who wrote the name "Avelino Liberal Party" is different from the person who wrote the name "Molintas". Moreover, it is apparent that the word "Molintas" is written over a name which was erased although we can not discern that name.

Exhibit D–84 is admitted. The name of the protestee appears just below the word "For Representative".

Exhibits D–85 and D–86 are rejected not only because they come from the box for spoiled ballots but in Exhibit D–85 the name of the protestee appears on the line for vice-president and in Exhibit D–86 the name of the protestee appears on the line for president.

Summarizing, the parties obtained in this precinct the following votes:

Protestant—Ballots uncontested	44
Ballots contested but admitted	7
Ballots claimed by protestee but adjudicated to protestant	14
Total	65
Protestee—Ballots uncontested	37
Ballots contested but admitted	41
Total	78

The votes obtained by the protestant and the protestee in the foregoing protested precincts are as follows:

	MITRA	MOLINTAS
La Trinidad—		
Precinct No. 1	92	150
Precinct No. 2	91	117
Precinct No. 4	38	101
Precinct No. 6	61	110
Precinct No. 7	2	105
Kabayan—		
Precinct No. 3	32	145
Precinct No. 5	23	109
Tublay—		
Precinct No. 2	16	152
Precinct No. 3	31	111
Atok—		
Precinct No. 1	3	68
Precinct No. 2	3	140
Precinct No. 5	0	95
Bokod—		
Precinct No. 4	7	214
Precinct No. 5	3	192
Precinct No. 6	32	125
Buguias—		
Precinct No. 1	20	88
Itogon—		
Precinct No. 1	10	218
Precinct No. 6	0	161
Precinct No. 14	2	236
Tuba—		
Precinct No .1	98	145
Precinct No. 2	17	198
Precinct No. 5	25	75
Baguio—		
Precinct No. 25	65	78
TOTAL	671	3,133

The votes obtained by the protestant and the protestee in the uncontested precincts are as follows:

Mitra	5,506
Molintas	2,784

SUMMARY

Votes obtained by the protestant:

In contested precincts	671	
In uncontested precincts	5,506	
Total		6,177

Votes obtained by the protestee:

In contested precincts	3,133	
In uncontested precincts	2,784	
Total		5,917
Plurality of protestant over protestee		260

The protestee claims that the ballots in Precinct No. 5 of the municipal district of Tuba were tampered with, and asks that the election returns which gave the protestee 169 votes and the protestant only 3 votes be considered as the true results of the election in said precinct, thus disregarding the ballots. The ballots in this precinct were examined and adjudicated by this Tribunal as shown in this decision. But even if we grant protestee's petition, the overall results of this protest will not be altered. Any further consideration of this point will be academic. (See Tolentino *vs.* Serrano (1948) ETHR Case No. 2.)

Protestee in his memorandum asked for the annullment of the election in Precincts Nos. 1, 2 and 3 of Kibungan. Protestant also asked for the annullment of certain precincts. The evidence they rely on, however, is neither clear and convincing nor solid and decisive. The protestee's evidence, particularly, is defective in that it consist mainly of the report of a committee which undertook to examine signatures and thumbmarks, none of whose members is an expert in either handwriting or fingerprint identification. None of them testified or was subjected to the searching light of cross-examination to enable this Tribunal to decide which of the conflicting opinions should prevail. They even disagreed and were in doubt in many cases. The questioned electors in Precincts Nos. 1, 2 and 3 of Kibungan are roughly one-third of the total number of electors who voted; and, moreover, there is no clear evidence as to for whom these questioned electors cast their votes. Under these circumstances, there would not be justification for this Tribunal to grant the petitions for annullment. The right of suffrage is one of the most vital rights in a democracy like ours and electors ought not, except on the strongest proof, be disenfranchised; much less should the majority of the electorate be disenfranchised merely because of suspicions concerning a small minority of them.

"Even it it were admitted that the votes of electors were illegal, nevertheless there being no evidence showing for whom said voters cast their votes, it cannot rightly be concluded that said votes and the irregularities supposedly committed by the inspectors affected the true result of the election." (Rimando *vs.* Jose, Election Case No. 3, 6 Lawyers' Journal, 116.)

"When the person elected obtained a considerable plurality of votes over his adversary, and the evidence offered to rebut such a result is neither solid nor decisive, not only in the judgment of the Supreme Court, but also that of the trial judge who saw and heard the witnesses testify, it would be imprudent to quash the election, as that would be to oppose without reason the popular will expressed in suffrage." (Rosanes *vs.* Peji, 53 Phil., 25.)

"If the state of facts proved leave it doubtful whether, on the whole, the poll should be retained or rejected, your Committee are of the opinion that they will best avoid the establishment of bad precedents by giving effect to the returns in all cases of doubt." (Howard *vs.* Cooper, 1 Bartlett's Election Cases, 276.)

Were we to hold that the protestee's evidence suffices to annul the election in the precincts he has challenged, the results would not be altered because, in such a case, we would be constrained to hold likewise that the protestant's evidence, particularly as to Precincts Nos. 6 and 14 of Itogon, is sufficient to annul the election in the precincts that the protestant has challenged. The annullment of one set of precincts would balance the annullment of the other set. As we have said, the evidence of both parties lack the persuasiveness and weight that removes all reasonable doubt which alone would justify granting their respective petitions for annullment.

In view of the foregoing, the Tribunal hereby declares that the protestant Ramon T. Mitra has been duly elected Representative of the Second District of the Mountain Province in the election held on November 8, 1949, with a plurality of 260 votes, with the right to assume the duties of his office. Consequently, the protestee Dennis Molintas is hereby declared unseated, and ordered to pay to the protestant the costs and incidental expenses of this case. So ordered.

Padilla, chairman, *Reyes, Bautista Angelo, Medina, Crisologo, Soriano* and *Rilloraza, Jr.*, members, concur.

LAUREL, *M.*, concurring and dissenting:

I concur in the result. The protestant unquestionably won in the last election and it is high time that the will of the people of his district is given effect. I believe that this Tribunal has been more than sufficiently lenient to the protestee to justify any other outcome.

We have admitted in favor of the protestee, among many other ballots, a group of some fifteen ballots cast in Precinct No. 25 of the City of Baguio containing certain numerals, "X" signs or check marks at the back thereof, as well as 133 ballots found in the white box of Precinct No. 6 of Itogon where the word "Nacionalista" appears written diagonally across the spaces for senators, except in two ballots where the word "Liberal" was the one written.

I am compelled, however, to disagree with respect to certain ballots.

Exhibits D–1 (Precinct No. 5, Kabayan), D–11 (Precinct No. 3, Tublay), D–6 (Precinct No. 2, Atok), D–15 (Precinct No. 4, Bokod), D–41 (Precinct No. 5, Bokod), D–43 (Precinct No. 6, Bokod), and R–30 (Precinct No. 1, Tuba), a total of seven ballots, should be rejected. In the first six ballots, the name of protestee appears either above or below the words "For Representatives" in the printed column of official candidates of the Avelino Wing of the Liberal Party, and in the last or seventh ballot the name

of the protestant is written above the same words in the same column.

In abandoning the block voting system, a voter is expected to write the names of individual candidates in the spaces indicated in the ballot and not elsewhere. In rejecting Exhibit D–18 (Precinct No. 1, La Trinidad), in which the name of the protestee appears on the left hand side of the ballot, below the words "Liberal Party", the majority of this Tribunal said: "Article V, section 1, of our Constitution requires that, in order to be entitled to vote, the voter must be able to read and write. And section 135 of the Revised Election Code orders the voter, in filling his ballots, to do so "by writing in the proper space for each office the name of the person for whom he desires to vote." Other ballots have been rejected for the same reason.

Indeed, this Tribunal in other cases and the Supreme Court in a long line of decisions have adhered to the rule requiring the names of candidates to be written in the spaces indicated on the ballots. Only when the names appear in the "neighborhood" of the proper spaces are deviations from the rule allowed and only because in such cases allowance is given, not so much for the ignorance or illiteracy of voters, as for pardonable mistakes consistent with clearly expressed intent. It would be stretching the "neighborhood" rule too far to admit the seven ballots now before us. Their admission, to my mind, runs counter to the constitutional and statutory rule on this point.

Where a representative district has been declared a "free zone", the Commission on Elections has allowed the name of a candidate belonging to a particular party to be written in the bank space below the words "For Representative" in the printed column of official candidates of that party. Posters, containing diagrams and instructions, were distributed by the Commission on Elections to guide and govern the corresponding voters. Whether or not the Commission acted properly in adopting this rule, it would certainly be improper for this or any other tribunal to reject ballots cast by voters who observed said rule. For this reason, I have voted with the majority in admitting ballots in which the name of the protestant or the protestee appears written in the blank spaces appearing in the printed columns of candidates of the Liberal Party, since this party did not have an official candidate for representative in the second district of Mountain Province.

I cannot, however, accede to a further departure from the settled law and doctrine in this jurisdiction by counting ballots in which the name of a candidate has been written on any other part of the ballot. Attention, in this connection, should be invited to the fact that below the words

"For Representative" in the column of official candidates of the Avelino Wing of the Liberal Party appears clearly printed the name of Leonardo Rilloraza, official candidate for representative of said party. If it was wrong for the voter who prepared Exhibit D–18 above-mentioned to write the name of the protestee under the words "Liberal Party" in the column of official candidates of that party, I do not think it correct for the seven voters here involved to write the same name at the other end of the ballot where no space is provided for and in which the name of a rival candidate belonging to another party appears. The basic rule of liberality which courts and election inspectors are expected to observe, in the fulfillment of their sworn duty to give effect to the will of the voters, is no warrant for the admission of ballots prepared in violation of the law which the people's representatives have seen fit to adopt under a general constitutional authority to regulate elections.

Exhibit D–6 (Precinct No. 6, La Trinidad) should also be rejected. Whether or not the name "Gaben Dimas", written in the space intended for block voting is that of the voter himself, I am of the opinion that he had no reason to write it, unless he meant to identify his ballot in violation of the fundamental principle of secrecy underlying the Australian ballot system adopted in this country.

Exhibit D–4 (Precinct No. 1, Buguias) should be counted in favor of the protestant. In this ballot, the voter wrote over a rough surface the word "Liberal" in the space for block voting and "Ramon P. Mitra" in the proper space for representative. The name of the protestee, however, was superimposed over that of the protestant by another person who wrote over a smooth surface.

Exhibit D–237 (Precinct No. 14, Itogon) should be admitted. This ballot appears to have been prepared by more than one person, but the name of the protestee appears clearly written in the proper space. If it is true, as the majority opinion states, that "We can not tell what names appeared first and what names were added later", the benefit of the doubt should be given in favor of the protestee. As stated by our Supreme Court in Mandac *vs.* Samonte (1926), 49 Phil., 284, "The ballot should be reasonably construed and the intendment should be in favor of a reading and construction which will render the ballot effective, rather than in favor of a conclusion which will, on some technical grounds, render it ineffective."

Exhibit D–3 (Precinct No. 14, Itogon) should be rejected. In this ballot, the name of the protestee appears in the third space for senators. The fact that the names of Laurel and Briones, who are candidates for President and Vice-President respectively, immediately precede it "in the order that they should be written on the ballot" does not con-

vert a space for senator into a space for representative. For the reason advanced in connection with the seven ballots hereinabove discussed, this ballot should not be counted.

Exhibit D–4 (Precinct No. 5, Tuba) should be counted in favor of the protestant. In this ballot, the voter wrote in the space for representative the name "R. Mitra", with the use of indelible pencil of the type with which voting booths were supplied. The name "D. Molintas", however, was superimposed over it by another person. This is evident from the fact that the names of the protestant and of the candidates for other offices appearing on the ballot were written with the same kind of writing instrument and with the same type and weight of strokes. The name of the protestee appears written with heavier strokes and with the use of an ordinary black lead pencil.

Exhibit D–31 (Precinct No. 25, Baguio) should be rejected. The name written by the voter in the space for representative, as stated in the majority opinion, is "Mitomtoso", which is distinct from the name of the protestee, and I do not see how it can be concluded that "his intention to vote for him is clear." The *idem sonans* rule has no application to cases where the names written are different from that of the candidate and no amount of pronunciation can produce a similarity of sounds between them. (*See* Laurel, Rules on the Appreciation of ballots (Manila, 1934), pp. 201–204.)

In conclusion, I submit that a total of eight votes should be deducted from the protestee and one vote added to the protestant. The plurality of said protestant should, accordingly, be increased to two hundred and sixty nine (269) votes.

Judgment for the protestant.

[ETHR No. 44. December 21, 1950]

JOSE M. REYES, protestant, *vs.* GODOFREDO RAMOS, protestee

1. ELECTION PROTESTS; QUALIFICATIONS OF MEMBERS OF THE HOUSE OF REPRESENTATIVES; RESIDENCE.—Protestant argued that the decision of the Court of First Instance of Capiz, wherein the court found that the protestee was a resident of Calibo since March 1949, or just eight months prior to his election, is final and conclusive, as to the length of his residence in Calibo and therefore that the protestee does not have the one-year residence, required by section 7, article VI of the Constitution prior to his election and for that reason, is ineligible to the office of Representative of the Third District of Capiz. *Held:* This view of the protestant cannot be accepted, not only because the Electoral Tribunal of the House of Representatives is a constitutional body invested with original and exclusive jurisdiction and as such is the sole judge to try all contests relating to the election returns and qualifications of the members of the House, and therefore, is not bound by the findings and conclusions of

other courts (sec. 11, Art. VI, Constitution), but also because the issue involved in said decision of the Court of First Instance was merely the right of the protestee and of his wife to be registered as voters in the municipality of Calibo and the proofs presented at the hearing in that case were intended solely to meet that issue. In the present case, however, the issue is squarely on the protestee's qualification as a candidate for representative of the Third District of Capiz and the Court of First Instance of Capiz did not receive any evidence bearing on that issue and did not and could not decide the same.

2. ID.; ID.; ID.—Residence is essentially a matter of intention, and may be changed at will provided the intention is clearly demonstrated and is accompanied by physical presence in the new chosen place of residence. Where the exterior acts of the protestee in an election contest, according to the evidence presented before said Electoral Tribunal, namely, the buying of residence certificate in the municipality of Calibo in January 1948, coupled with actual residence in said town since March of the same year, are sufficient to show that the protestee wanted to regain his former residence in the said town, the protestee must be declared eligible to the office of Representative of the Third District of Capiz in the election held on November 8, 1949.

ELECTION PROTEST

ORIGINAL ACTION filed with the Electoral Tribunal of the House of Representatives. Election protest.

The facts are stated in the opinion of the Tribunal.

Miguel Tolentino for the protestant.
Tomas Yumol for the protestee.

MEDINA, *M.:*

Winning by a margin of 1,106 votes over his closest opponent, in a clean and free election, the respondent herein, Godofredo Ramos, was proclaimed elected by the Provincial Board of Canvassers of Capiz on November 23, 1949, as the duly elected representative of the Third District of said province. In due time, his closest opponent, Jose M. Reyes, contested protestee's election on the sole ground "that the protestee was ineligible to the said office because he, as of the date of and before the election, was not a resident of the province of Capiz".

The evidence presented by the contestant tends to establish that although the contestee was born and grew up in the municipality of Calibo, Province of Capiz, he left the said province for Manila in 1931; that shortly thereafter his mother followed him to this City, and that they disposed of all of their properties in Calibo; that the protestee never returned to Capiz until approximately eight months before the general election held on November 8, 1949; that the protestee married in the City of Manila, and had all his children baptized and educated in the City schools of Manila or of Quezon City; that in 1946, he became a registered voter in the City of Manila and actually voted in the national election for President held on April 23, 1946; that

in 1948, he acquired properties in Quezon City and declared in the deed of acquisition, exhibit "N", that he resided at Sampaloc Avenue, Quezon City. It is likewise alleged that in the general election held on November 8, 1949, the protestee and his wife applied for registration as voters of the municipality of Calibo; that one Vivencio P. Melgarejo impugned the right of the contestee and of his wife to be registered as voters of the said municipality on the ground that they did not have the required legal residence (Exhibits E–1 and P); and that the Court of First Instance of Capiz, after hearing the evidence, ruled that the protestee and his wife have been residing in Capiz since March of 1949, and therefore, were qualified to be registered as voters (Exhibits "E" and "E–2").

On the other hand, the contestee maintains that it was never his intention to abandon his residence in the municipality of Calibo; the contestee admits that in the year 1931 he came to Manila after graduating from the Calibo High School, in order to continue his studies and to take advantage of his scholarship as an honor student; at that time there was no university in the Province of Capiz where he could continue his studies of law; that he actually studied in the University of Manila, and being a working student, he finished the preparatory and law courses in 1941. That in 1934 his mother also came to Manila and established a dormitory in order to help him in his studies; that he visited Calibo twice a year, during the fiesta of Santo Niño and during the summer vacation; and voted in Calibo twice before the war, and that his father always lived in the province of Capiz where he was working as a *capataz* in the Bureau of Public Works; that in 1941, at the outbreak of the war, he decided to return to Capiz and was about to board the ill-fated *S.S. Corregidor*, but the boat was already over-crowded and he had to stay in Manila, and since then, there was no other transportation for Capiz and had to remain with his family in Manila for the duration of the war; that in 1946, he was appointed by President Roxas, Delegate for the province of Capiz to the national convention for the Liberal Party; that on January 30, 1948, he bought his residence certificate, Exhibit "1", in the municipality of Calibo, province of Capiz, and on April 7, 1948, he organized and established in Calibo the Northwestern Visayan Colleges of which he was the first President; and that he actually stayed in the municipality of Calibo for about one month during the organization and founding of the said institution, and since then established residence in Calibo and directly ran the affairs of the institution, although he often had to come to the City of Manila to attend to his unfinished cases in the different courts of the City. Explaining the sale of his family's properties in

Calibo, the protestee stated that said properties were mortgaged by his parents when he was yet studying in the high school and for lack of funds they could not be redeemed on time; hence, the mortgaged properties were foreclosed and later on sold. The contestee admitted that in 1946 he registered as a voter in the City of Manila and voted during the election of 1946; (s. n., p. 123); he affirmed, however, that he did not vote in any election thereafter, and for that reason, he did not ask for the cancellation of his registration in Manila before he became a registered voter of Calibo because he thought that his registration in the City of Manila had been automatically cancelled by operation of law.

Judging from the above proofs, the Tribunal believes that the following pertinent facts are sufficiently established by a preponderance of evidence: that the protestee is a native Filipino, born and reared in the municipality of Calibo, Province of Capiz; that in 1931, after graduating from the high school, he left his home province of Capiz and came to Manila to pursue his studies in the University of Manila; that his parents were poor, and not being able to pay their obligations, their house and properties which have been mortgaged to meet protestee's expenses in the high school, were foreclosed and sold; that in 1934, his mother, in her desire to help her son, followed the protestee to the City of Manila where she operated a dormitory, until he finished his law course in the year 1941; that between the years 1931 and 1941, the protestee used to return to Calibo not only during summer vacation but also during the fiesta of Santo Niño; that the protestee voted twice in Calibo, before the outbreak of the war; and that at the outbreak of the war, in 1941, he tried his best to return to Capiz with his family, but was not able to do so because the *S.S. Corregidor*, which he and his family intended to board, was already overloaded, and for that reason, they were not able to take that trip, and since then there was no available transportation for Capiz, so he had to remain in Manila with his family, and happily so, because the *S.S. Corregidor* never reached its destination, and furthermore, by staying in Manila, the protestee was able to take and pass the bar examinations in 1944.

That in 1946, the protestee registered as a voter in the City of Manila and voted in the general election of that year (t. s. n., p. 123). However, on January 30, 1948, he purchased his residence certificate in Calibo, and in the month of March, 1948, he organized and founded the Northwestern Visayan Colleges in the said municipality of Calibo; that in the course of the organization and founding of the said institution of learning, he established his residence in Calibo and actually stayed in Calibo continuously for about

one month and as President of the institution he personally attended to and ran the affairs of the school. He admitted, however, that after establishing his residence in Calibo, he often came to Manila to attend to his unfinished cases in the City. That in 1949, he applied for registration as a voter in the municipality of Calibo and his right as a voter was challenged by Vivencio P. Mergarejo, and the Court of First Instance of Capiz ruled that he was qualified to vote, having been a resident of said town since March of 1949, and therefore, more than six months prior to the election of 1949 (Exhibits E and E–2).

For a clearer understanding of the issues involved in this case, the Tribunal considers convenient to divide the period of time from 1931—the year when the protestee left Calibo,—to the date of his election on November 8, 1949, into three stages: namely, from 1931 to 1946; from 1946 to 1948; and from 1948 to November 8, 1949.

First Stage.—From 1931 to 1946, it is clear that the protestee did not have any intention of abandoning his residence in the municipality of Calibo. The fact that he came to Manila to pursue his studies in 1931 and stayed in this City until 1945 does not indicate any desire on his part to change residence or to acquire a new one.

"It has been very clearly established that one who resides in a place for no other purpose than that of acquiring education, does not thereby become a resident for the purpose of voting." (Vanderpoel *vs.* O' Hamlon, 53 Ia. 246, 5 NW. 119, 35 Am. Rep. 216; Fry's Election Case 71 Pa. St. 302, 10 Am. Rep. 698. (9R E. L., p. 1032). (Cited in Memorandum of Protestee, p. 6).

"* * * no person shall be deemed to have gained or lost his residence by reason of his presence or absence while a student in any seminary or institutions of learning. While such provisions do not prevent a student at an institution of learning, otherwise competent to vote, from acquiring a residence there for voting purposes if he makes it his actual residence and assumes the duties and responsibilities of citizenship in that election district, his presence there is not even presumptive evidence of his intention to make that his actual residence, and where he has previously had a legal residence, elsewhere the facts to establish a change of residence must be wholly independent and outside of his presence in the district as student, and should be very clear and convincing to overcome the natural presumption." (20 C. J. Sec. 30. p. 72).

"A student in a college town is presumed not to have the right to vote in that town; and the fact that he has resided there the necessary length of time does not of itself entitle him to vote in that town. The same rule, however, for determining residence apply to students as to other persons, and therefore the question as to whether a college student has a voting residence at the place where the college is situated depends upon the facts and circumstances of the case. Thus if he has no intention of remaining in the place permanently, but has another home to which he intends to return after his sojourn at college, he is not such a resident as entitles him to vote." (20 C. J., Sec. 30, p. 72).

"There must be evidence of complete abandonement of the former residence; but absence from it will be regarded as temporary, and

too much weight should not be attached to declarations of present or future purposes by a student after the question of residence is raised; there must be satisfactory evidence tending to show abandonment." "Welch *vs.* Sumway, 232 III 54; Op. Atty.-Gen., Sept. 6, 1923).

The fact that protestee's mother joined him in Manila and operated a dormitory in this City, and the fact further that their properties in Calibo were sold to the creditors, are of little weight, specially if we consider the uncontradicted testimony of the protestee that he never intended to abandon his residence in Calibo, and that since he left said town in 1931, he used to visit the same at least twice a year, and voted twice in said town before the war, showing thereby that the *animus revertendi* was always present in his mind.

"In order to work a change of residence there must be both in fact and intention an abandonment of the former residence, and a new domicile acquired by actual residence, coupled with an intention to make a permanent home. Thus an absence for months or even years, if all the while the party intended it as a mere temporary arrangement, to be followed by a resumption of his former residence will not be an abandonment of such residence or deprive him of his right to vote thereat, the test being the presence or absence of the *animus revertendi* (20 C. J., Sec. 28, p. 71). (The Revised Election Code, Francisco, p. 136).

Second Stage.—From 1946 to 1948, the situation of the protestee is, however, entirely different. In 1946, the protestee applied for registration as a voter in the City of Manila. Under oath, he declared that he was a resident of the City of Manila (Sec. 109, Election Code), and on election day he exercised his right of suffrage and actually cast his vote; (t. s. n., p. 123). Under the above facts, the conclusion is inevitable that the protestee abandoned his residence in the province of Capiz and acquired a new one in the City of Manila. His intention to be a permanent resident in Manila was clearly expressed by him in his voter's affidavit and also when he entered the booth and cast his vote in 1946.

"The intent to permanently dwell in a place may be manifested either by a declaration of the person or by his acts. The exercise of the right of suffrage, the dwelling place of one's family, and the seat of one's business interest may evidence such intent." (20 C. J. 69).

"There is no hard and fast rule by which to determine where a person actually resides. Each case must be depended on its particular facts or circumstances. Three rules are, however, well established: First, that a man must have a residence or domicile somewhere; second, that where once established it remains until a new one is acquired; and third, a man can have but one domicile at a time. (9 RCL, 1031; Alcantara *vs.* Secretary of Interior, 61 Phil., 459). (Francisco, Election Code, pp. 131-132).

"While voting is not conclusive of residence, it does give rise to a strong presumption of residence. As one authority has said: The place where a person has voted is taken as his place of residence in

the absence of irresistible proof to the contrary. In some case the fact of voting taken in connection with other circumstances, has been held sufficient to establish residence. Hernandez *vs.* Lukban, Elec. Prot. No. 13, (E. C.) Sept. 30, 1936, 5 L. J. 245. (Francisco, Election, p. 133).

It is, therefore, safe to conclude that the protestee, from 1946 to 1948, by his own choice and conduct, became a resident of the City of Manila losing thereby his residence in Calibo, Capiz.

Third Stage.—In January 1948, however, the protestee obtained his residence certificate in the municipality of Calibo.

"Payment of personal property taxes in the state in which one declares his domicile is situated is of weight in determining whether it was his intention to make that state his home." (17 Am. Jr. p. 645).

And since March of that year, he actually lived for about one full month in the said municipality of Calibo and founded therein the Northwestern Visayan Colleges and became its first President. As president of the said institution, the protestee directed the affairs of the College until his resignation in 1948. It can therefore be seen that since March of 1948, or more than one year prior to his election, the protestee not only had the intention to regain his lost residence in the municipality of Calibo, but actually resided in that municipality.

Residence is essentially a matter of intention, and may be changed at will provided the intention is clearly demonstrated and is accompanied by physical presence in the new chosen place of residence.

In the case at bar, we are satisfied that the exterior acts of the protestee namely, the buying of residence certificate in the municipality of Calibo in January 1948, coupled with actual residence in said town since March of the same year, when he founded the Northwestern Visayan Colleges, are sufficient to show that the protestee wanted to regain, as in fact he did regain his former residence in the said town of Calibo.

Protestant argued that the decision of the Court of First Instance of Capiz, Exhibits E and E–2, wherein the court found that the protestee was a resident of Calibo since March 1949, or just eight months prior to his election, is final and conclusive, as to the length of his residence in Calibo and therefore, that the protestee does not have the one year residence, required by section 7, Article VI of the Constitution prior to his election, and for that reason, is ineligible to the office of Representative of the 3rd District of Capiz.

We cannot accept this view of the protestant not only because this Tribunal is a constitutional body invested with original and exclusive jurisdiction, and as such is the sole

judge to try all contests relating to the election returns and qualifications of the members of the House of Representatives, and therefore, is not bound by the findings and conclusions of other courts, (Sec. 11, Art. VI Philippine Constitution), but also because the issue involved in Exhibits E and E–2, was merely the right of the protestee and of his wife to be registered as voters in the municipality of Calibo, and the proofs presented at the hearing, were intended solely to meet that issue. In the present case, however, the issue is squarely on the protestee's qualification as a candidate for representative of the Third District of Capiz and the Court of First Instance of Capiz did not receive any evidence bearing on that issue, and did not and could not decide the same.

For all foregoing considerations, the Tribunal declares that protestee Godofredo Ramos, was eligible to the office of representative of the Third District of Capiz in the election held on November 8, 1949, and therefore, dismisses the motion of protest, without costs.

Padilla, Reyes, Bautista Angelo, Cricolago, Soriano, Concordia, and *Rilloraza, Jr., members,* concur.

LAUREL, *M.*, concurring:

I concur in the result. I am not, however, prepared to hold that there was an interruption for the entire period from 1946 to 1948 simply because he registered and voted in Manila in April, 1946.

Motion of protest dismissed.

[ETHR No. 37. December 6, 1952]

VICENTE LOGARTA, protestant, *vs.* LEANDRO TOJONG, protestee

1. ELECTION PROTESTS; ANNULMENT OF ELECTION, WHEN NOT JUSTIFIED.—The allegations of the protestant of widespread terrorism before and during the election and wholesale fraud and other irregularities committed on the election day has been established by a preponderance of evidence strong enough to warrant a conclusion that the election in the 102 contested precincts was so fundamentally vicious that it should be voided and the votes cast therein nullified. The existence of a reign of terror during the pre-electoral days in the City of Cebu was not only clearly established by the unchallenged testimonies and other documentary evidence but it has been admitted impliedly by protestee himself. As to his personal participation in the acts of terrorism committed in that city in the said elections, he may be commended for having taken no direct part therein and having no knowledge thereof. *Held:* The Tribunal cannot tolerate the commission of those frauds and terrorism and, therefore, condemns such elections; and no matter who was the beneficiary to such illegal acts must suffer the consequences. (Gardiner *vs.* Romulo, 26 Phil., 522–523; Mandac *vs.* Samonte, 49 Phil., 283; Garchitorena *vs.* Crescini, 39 Phil., 285; Reyes *vs.* Biteng,

57 Phil., 100; Dayrit *vs.* Lazatin, G. R. No. 43149.) However, the instant protest must be decided on the basis of the available evidence, even where the existence of fraud and/or intimidation was proven rather than annul the elections (Roque *vs.* Lava (ETHR No. 20). The Tribunal, therefore, declares the protestant as the duly elected Representatives for the corresponding congressional district and unseats the protestee. But in fairness to the protestee, who had not personally or directly participated in the commission of the frauds and terrorism but was only a beneficiary to such commission by a bigger political machinery in the province, the Tribunal makes no pronouncement as to costs.

ELECTION PROTEST

The facts are stated in the opinion of the Tribunal.

Vicente Logarta for the protestant.
Honorio Cariñgal for the protestee.

SORIANO, *M.:*

In the elections held on November 8, 1949, the Provincial Board of Canvassers of the province of Cebu proclaimed the herein protestee, Leandro Tojong, as representative-elect for the Second Congressional District of Cebu over the protestant, Vicente Logarta. According to the final returns in the Commission on Elections, the votes obtained by both protestant and protestee are as follows:

Leandro Tojong	24,297 votes
Vicente Logarta	15,466 votes

The protestant, Vicente Logarta, who was the standard bearer of the Nacionalista Party, confined his protest only in the City of Cebu where the protestee, Leandro Tojong, Liberal Party candidate, garnered a plurality of 9,337 votes. The protest is based on the following grounds:

"A. That during the election day groups of so called Special Police together with members of the City Police Force were posted at the entrance of the precincts above mentioned heavily armed, and even within the 30-meter radius of the electoral precincts;

B. That these armed men through threat, intimidation and the use of force and display of guns, prevented Nacionalista voters from entering the precincts to cast their votes;

C. That these armed special policemen together with Cebu City policemen and Secret Service men forced electors who were able to get into the precincts by simulating they were Liberal voters, to show their ballot, then have it changed with another one if they were found voting for the Nacionalista ticket and then coercing them to vote for the protestee Leandro Tojong at the point of their guns;

D. That these Special Policemen and members of the Cebu City Police Force in some instances fired with their guns near the precincts to intimidate Nacionalista inspectors thus forcing them to leave their posts and also to intimidate Nacionalista voters.

E. That these same armed persons voted for absent voters;

F. That if a voter whose political color is ignored or doubted, entered the precincts these armed persons followed him inside the voting place in order to be sure that he votes for the Protestee;

G. That voters who refused to show their ballots were beaten, slapped or hit with their guns, inflicting on them physical injuries;

H. That when the voters, notwithstanding the threats, intimidation and violence of the armed leaders of the protestee, refused to change their votes these armed men would grab the ballots and then they themselves altered the votes by writing thereon the name of the protestee;

I. That the protestee thru his henchmen, heavily armed as they were got hold of blank ballots, have them distributed outside the precincts instructing people to fill said ballots in favor of the protestee;

J. That the said illegal acts of coercion, terrorisms, and compulsions continued during the entire period of the voting of November 8, 1949, until the counting of the votes casts;

K. That votes cast in favor of protestant were read in favor of protestee by forcing the Board of Inspectors to do so at the point of a gun;

L. That the few votes obtained by protestant were cast by his followers during the early hours of election day when the armed guards had not yet arrived at the electoral precincts;

M. That even two weeks before the election day a so-called flying squad composed of armed thugs guided by members of Cebu City Police Force used to go around the city at night visiting Nacionalista leaders threatening them to stop working for the protestant and if they refused to heed their warning the next day said leaders were either slapped, manhandled or maltreated and if they were not found in their residence their houses were fired at with Thompsons and Carbine bullets;

N. That because of these acts of systematic terrorism many Nacionalista leaders abandoned the city several days before the election day and many of the Nacionalista Inspectors refused to sit in the election day."

According to the motion of protests, the following seventy (70) precincts are contested:

Nos. 2, 12, 13, 14, 15, 15-A, 19, 19-A, 22, 23, 25, 26, 26-A, 27, 28, 31-A, 33, 40, 40-A, 46, 46-A, 55, 59, 64, 66, 70, 75, 76, 77, 81, 83, 83-A, 84, 87, 87-A, 88, 90, 94, 104, 105, 107, 111, 113, 113-A, 114, 114-A, 115, 124, 124-A, 128, 128-A, 132, 135, 138, 138-A, 138-B, 139, 140, 142, 142-A, 151, 152, 154, 156, 157-A, 158, 160, 167, 169 and 170.

Out of these seventy precincts, however, only 59 of them were covered by protestant's evidence. The remaining 11 precincts were not considered by protestant's proof. These eleven precincts, namely, Precincts Nos. 76, 87, 90, 107, 132, 135, 153, 159, 164-A, 166 and 167 can, therefore, he considered dropped for lack of evidence.

But during the course of the trial the protestant presented evidence, both oral and documentary, covering 43 additional precincts in the City of Cebu besides those enumerated in the original motion of protest. The evidence presented covering these 43 additional precincts were allowed to go on record without the slightest opposition or objection on the part of the protestee's counsel. So, although these additional precincts were issues not originally raised in the pleadings, by implied consent of the

adverse party, they can be treated in all respects as if they have been raised in the pleading. (Sec. 4, Rule 17, Rules of Court.)

Taking into account all facts appearing on record, the total number of electoral precincts therefore involved in this protest is brought to 102, which precincts are:

Nos. 2, 8, 12, 13, 14, 15, 15–A, 16, 17, 18, 18–A, 19, 19–A, 22, 23, 25, 26, 26–A, 27, 28, 29, 31, 31–A, 32, 33, 36, 38, 40, 40–A, 41, 42, 44, 46, 46–A, 49, 55, 57, 58, 59, 61, 63, 64, 66, 67, 68, 70, 75, 77, 78, 79, 80, 81, 83, 83–A, 84, 84–A, 87–A, 88, 89, 104 105, 110, 111, 112, 113, 113–A, 114, 114–A, 115, 116, 120, 122, 123, 124, 124–A, 127, 128, 128–A, 131, 131–A, 135–A, 136, 137, 138, 138–A, 138–B, 139, 140, 142, 142–A, 151, 152, 154, 156, 157–A, 158, 160, 160–A, 160–B, 169 and 170.

Total votes involved in these 102 contested precincts are:

Leandro Tojong	11,814 votes
Vicente Logarta	2,370 votes

These are the votes the validity or illegality of which this Tribunal is called upon to decide.

Protestant's evidence, both documentary and oral, shows that days prior to November 8, 1949, there were organized in the City of Cebu several groups composed of thugs, gangsters "canto" boys and other undesirable elements fully armed and equipped with identification cards as special agents of the City Police, like the "boñgotons", a gang of cutthroats who sported beards; that this army-like organization was utilized to terrorize the Nacionalista leaders and affiliates in the City of Cebu. The existence of these "gangs" was made known to the public for the first time when armed men composing the same opened fire at a meeting held in a public plaza by the Nacionalista Presidential Candidate, Jose P. Laurel, dispersing a mammoth crowd estimated at around 40,000 persons. Since then, and most particularly during the last two weeks immediately preceding the Election Day, the terroristic campaign waged by the members of these organized groups was more intensive and systematic. At 7:00 o'clock every evening they used to meet and gather in a restaurant known as "Bahug-Bahug" where they ate and got drunk; and from there they went to the different places of the City, firing indiscriminately in the air with their guns while traveling along the streets, just to scare and alarm the peaceful residents. Almost every night they had victims.

Examples of such terrorism by these armed men are the following: An old man, a sexagenarian, Basilio Caballes, a Nacionalista leader, while praying to God with his family amidst the quietness and solitude of the night, was visited by these armed thugs and was told to come down from his house. Once down, he was brutally assaulted, beaten up, and mauled. Caballes was picked up by the members of

his family lying down in a ditch unconscious and bathed with his own blood. He was hospitalized and upon his recovery from his wounds he left his home province to seek refuge in Zamboanga where he stayed long after the 1949 elections.

A rabid supporter of the protestant, Nene Palomar, was another victim of the gang. This young political leader was requested to open the door of his house. He came down to open the door. His unexpected visitors rushed on him, grabbed him by the neck and dragged him out of his dwelling. He was hit with the butt of a gun carried by his assailants, was elbowed, kicked, boxed, slapped and left unconscious.

Antonio Repollo, Liberal Party candidate, Avelino Wing, for the 3rd Congressional District of Cebu, was sighted one afternoon taking his refreshment in a well-patronized restaurant located in the very heart of the City of Cebu by some of these hired thugs. Repollo was invited to step out of his eating place and once out was maltreated and assaulted. Due to the seriousness of the injuries he received, he fell down senseless and was dumped beside his car parked at one side of the street.

Sofronio Cabahug and Roberto Esmero on different dates and at different places were two among the other leaders and supporters of protestant who were victimized by the organized "gangs" of terrorists. Both received serious physical injuries.

There were many other followers of the protestant who, although not subjected to bodily harm, were threatened and intimidated. Nicomedes Macan, Amado Sanchez and Juan Borres were among them. Their residential houses were fired at and their roofing were sown with bullet holes.

This terroristic campaign culminated in the raid of the Nacionalista Headquarters. One night, very close to the Election Day, the entire force composing the different gangs supported by plain clothmen of the Cebu City Police, all fully armed, surrounded the building where protestant's party had its headquarters, at a time when protestant himself and his followers were broadcasting a radio political propaganda. The broadcast had to be discontinued.

On the very eve of the Election Day, the terrorists went to the barrio of Inayawan looking for Natalio Bacalso, the city campaign manager of the protestant. Bacalso went in hidding and could not be found, and so his house was fired at and its facade was riddled with bullet holes.

The campaign waged by these organized groups was so effective that it was felt among the greater bulk of the City population creating an atmosphere of terror and panic which was so intense that it forced the closing of

the "Pioneer Press," a newspaper of very decisive influence in the City and Province of Cebu. The editors of this paper, subjected to the same threats and intimidations and realizing the grave dangers to which they and their respective families were exposed, left the City of Cebu hurriedly and unnoticed. Fred Cruz, the Managing Editor said: "We were no longer able to stand the pressure on us, we felt we had to close." The leaders of the protestee wanted this newspaper closed "in order to be able to manipulate the elections to their own advantage."

On the election day, protestant's evidence also shows: These same armed thugs who terrorized the City of Cebu were employed, duly armed as they were, to guard electoral precincts particularly those involved in the instant electoral protest. They were posted at the entrance of the voting places under instruction not to allow any voter to cast his vote without previously being screened.

Typical examples of cases of electors belonging to protestant's faction who were prevented from casting their vote or who were previously screened before allowing to enter the electoral precincts were:

Emilio Jaca, who, while accompanying a group of Nacionalista electors to the precincts in "Inayawan" was met at the stairway of the school building where the precincts of this barrio were located by an armed guard. Pointing his gun at the breast of Emilio Jaca, the guard told him to stop and leave the place. After a hot discussion with the armed men guarding the precincts and realizing the futility of his desire to insist in casting his vote, Emilio Jaca had to leave the place with the group of electors coming behind him unable to vote.

Protestant's political leader, Rafael Villacarillo, was struck on the mouth and his lips bled while accompanying electors to vote in the precincts of T. Padilla.

Rafael Navaja upon approaching the electoral precincts at barrio Tisa at the head of a group of protestant's electors, was fired at by the armed men guarding the precincts, causing all of them to scamper away.

Around 300 electors were dispersed while waiting for their turn to cast their vote in front of the precincts situated in the Lawyers' League building. One of the armed guards cocked his gun and threatened to fire at the crowd. The whole group scampered away leaving the place without being able to vote.

Similar groups of around 200 electors belonging to protestant's faction also dispersed while waiting for their turn to vote in front of the precincts at barrio Carreta.

And still another group of around 100 protestant's voters were prevented from casting their vote by having been driven away, through threats and intimidation, from the

vicinity of the precincts at Banilad known as Landing Field.

But, undoubtedly, the most glaring instance of how rigid was the screening of electors before allowing them to enter the precincts, was the case of former Secretary of Public Works Sotero Cabahug, who, upon entering the precinct of Mabolo where he was to cast his vote, was stopped by one of the armed guards watching the precincts. The barrel of a gun was placed across Cabahug's breast and was told not to enter. Secretary Cabahug had to ask City Fiscal Jose Abad to accompany him to the precinct and it was only then that he was able to cast his vote.

Followers and supporters of the protestant, who, by one reason or another managed to elude the screening and were able to gain entrance into the electoral precincts, were watched and followed by the armed guards to the voting booth and forced to show their ballots. Electors who refused to show their ballots or to vote as instructed by the armed guards were either thrown out of the precincts, assaulted, manhandled or forced to vote for protestee through intimidation and threat. Lady Atty. Miel was slapped on the face for refusing to change her vote. Dr. Tabotabo was boxed on the face for covering his ballot with his hands while voting. Nicolas Alquizola, who refused to change in his ballot the letter "N" for the letter "L", was pulled outside the precinct and, there, was maltreated and beaten. All these cases occurred in the precincts located inside the Lawyers' League building. There was the case of Mr. and Mrs. Rodriguez who were forced, through threat and intimidation, to vote "Liberal" in the precinct of P. del Rosario. Ramon Palacio, a high school teacher, was hit on the mouth because of having refused to vote as instructed by the armed guards. The ballot of a lady teacher, Mrs. Canada, was snatched and crumpled after having been found to have voted for the protestant in the precinct of the barrio of Mambaling. City Assistant Engineer Arvisu was grabbed by the neck and deprived of his ballot while trying to cast his vote in precinct of Fuente Osmeña because of having refused to show how he voted. Presentacion Castillo was ordered to change her vote in favor of the protestee at the point of a gun. Urbano Ines was maltreated and manhandled for having refused to show his ballot.

The same armed guards watching the precincts voted for absent voters by filling in blank ballots in the precincts of P. del Rosario, Zulueta St., and El Pardo. Election returns were altered upon order of the armed guards in the precincts situated at Plaza Hamabad and in the city Intermediate School building. Nacionalista election inspectors were ordered to abandon their places and fired at for refusing to obey. This happened in the case of Nicolas

del Mar in precinct No. 41. Electors allowed to enter into the electoral precincts were made to vote openly in the precincts situated at M. de la Concepcion Street and in the precincts of Fuente Osmeña.

Any of these incidents described by witnesses of the protestant: the Caballes mauling, the raid of the Nacionalista headquarters, the open and defiant totting of arms by members of the gangs in public places, the indiscriminate firing of guns at midnight in the streets of the City of Cebu, the incident of Palomar and the assault on the person of Antonio Repollo, would have been sufficient to instill in the minds of the people of the city a feeling of panic and fear.

"Cases of kidnapping and murder, no matter how few they were, if they formed part as they did in the case at bar—of the terrorism waged by the Hukbalahaps (in this case by the members of the terroristic gangs) in the whole province of Pampanga (City of Cebu) must have spread in every home and must have caused reasonable fear in the minds of the people". (Sanidad et al., *vs.* Vera et al.)

Protestee's evidence on the other hand, consisted merely of general denials: That there were no frauds, no threats and intimidations employed, that there were no irregularities committed during the election day and that the elections were normal, peaceful and orderly.

None of the numerous and specific instances of fraud, violence, intimidation, threat, and none of the specific cases of anomalies and irregularities allegedly committed brought out by protestant's evidence on election day in the contested precincts have been directly and specifically denied and challenged by protestee's witnesses including protestee, himself.

A thorough and careful study of the records of this electoral protest will show that the allegations by the protestant of widespread terrorism before and during the election and wholesale fraud and other irregularities committed on the election day, in our opinion, has been established by a preponderance of evidence strong enough to warrant a conclusion that the election in the 102 contested precincts was so fundamentally vicious that it should be voided and the votes cast therein be nullified. The existence of a reign of terror during the pre-electoral days in the City of Cebu was not only clearly established by the unchallenged testimonies and other documentary evidence of the protestant but it has been admitted impliedly by protestee himself, when in the course of his testimony before this Tribunal, he said, that he "had to issue passes to his friends and supporters in order to prevent them from being molested by the special agents". As to his personal participation in the acts of terrorism committed in the City of Cebu in the elections of November 8, 1949, he may

be commended for having taken no direct part therein and having no knowledge thereof. When pressed to state whether or not there was really terrorism in Cebu City, he merely stated with all candidness: "As to terrorism, frankly speaking, I never knew their (Liberals) plans of terrorism. I do not know anything". We may venture to say that, probably, without the employment of frauds and terrorism in the City of Cebu, in a clean, honest and untramelled election, where all the voters of Cebu City could have voted freely without fear of intimidation, the protestee might have won over his opponents because he was and is very popular and well-known in the City, having been previously elected twice to the Municipal Board and acted as its President for a number of years. As a physician, by profession, he was and is admired and loved by the people. But unfortunately, the fact remains that frauds and terrorism had been committed during said election when he was a candidate for Representative. This Tribunal cannot tolerate their commission and, therefore, condemns such elections; and no matter who was the beneficiary to such illegal acts must suffer the consequences.

The long line of specific instances of fraud, violence, intimidation and other irregularities so vividly described by protestant's witnesses, conclusively proved, in our judgment, that the 1949 election in the 102 contested precincts of the City of Cebu, cannot be "clean", "normal", "honest", "peaceful", and "orderly", as claimed by protestee's witnesses in a general way. Most of the witnesses of the protestee were government officials and persons who could be rightly considered as interested parties. Some were members of the Police Force of the City of Cebu, which led and protected the organized groups of thugs in terrorizing the Cebu City electorate before and during the election day. Their testimonies, therefore, scarcely deserve any credence. But even granting that protestee's witnesses were worthy of full credit, their testimonies merely consisting of generalities and vague denials cannot be destroyed "overweighed by the general denials" the affirmative positive statements of facts of the protestant's witnesses. (P.P.I. *vs.* Barbaro, Off. Gaz., No. 2, 478; P.P.I. *vs.* Gonzales, 42, Off. Gaz., No. 12, 3195; P.P.I. *vs.* Macalindang, 43, Off. Gaz., No. 2, 290).

All the facts above stated led us to the conclusion that the election in the 102 contested precincts, having been so tainted with widespread irregularities and anomalies, should be set aside. "When the fraud or intimidation is flagrant and its influence diffusive so that it becomes impossible to separate the good votes from the bad and determine the true result of all the good ballots cast, the returns should be voided." (Gardiner *vs.* Romulo, 26 Phil., 522–523; see also Mandac *vs.* Samonte, 49 Phil., 283;

Garchitorena *vs.* Crescini, 39 Phil., 285; Reyes *vs.* Biteng, 57 Phil., 100; Dayrit *vs.* Lazatin, G. R. No. 43149). And it has also been held in the same case of Sanidad *vs.* Vera, *supra,* that the enormous disproportion between the number of electors registered and the number of electors who actually voted on the election day is a circumstantial evidence of terrorism. In the instant electoral protest, the number of registered voters in the entire City of Cebu alone amounting to 56,457, only 28,467 actually voted; about one-half did not vote.

However, as in the case of Roque *vs.* Lava, (Electoral Case No. 20, E. T. H. R.), we are inclined to decide this protest on the basis of the available evidence, even where the existence of fraud and/or intimidation was proven rather than annul the elections.

In the adjudication of election cases, "the true policy," says McCrary, "is found in zealously guarding the purity of the ballot, in placing no fine drawn metaphysical obstructions in the way of testing election returns charged as false and fraudulent, and in insuring to the people by a zealous, vigilant and determined investigation of election frauds, that there is a saving spirit in the public tribunals charged with such investigations, ready to do them justice if their suffrages have been tampered with by fraud, or misapprehended through error." (American Law of Election, 4th Edition, 371.)

This Tribunal, therefore, zealous of its duty to preserve as much as possible the sanctity and integrity of the ballot, and in order to place itself as near as possible to the real truth in the interest of justice, *motu propio,* has imposed upon itself the task of examining the best evidence which are the ballots themselves contained in the ballot boxes of the 102 contested precincts of the City of Cebu, resulting in:

1. That out of the 29,087 registered voters in these 102 precincts, only 15,057 actually voted during elections. Almost one-half did not vote.

2. That in practically all of the 102 precincts the election returns did not show correctly the number of votes actually cast for each candidate. Many votes for the protestant were not counted for him but instead were counted for the protestee.

3. That a great majority of the ballots cast for the Liberal Party were written in groups by the same hands and that so many ballots voted Nacionalista were crossed out and "Liberal" written by the same hand.

4. That in an effort to segregate the good ballots from the spurious ones, the following have been found and counted as valid votes for each party in the 102 contested precincts:

Leandro Tojong	4,140 votes
Vicente Logarta	3,664 votes

The total number of votes obtained by each party in the precincts, not included in this protest, of Cebu City

and the municipalities of Compostela, Consolacion, Cordoba, Liloan, Mandawe and Opon, give as follows:

Vicente Logarta	13,096 votes
Leandro Tojong	12,483 votes

So that, if the elections in the 102 contested precincts in the City of Cebu are annulled, the protestant would have a majority of 613 votes. But, without resorting to annullment and taking into consideration the valid votes found in the screening of the ballots in said 102 contested precincts, the parties obtain in the entire District the following results:

Vicente Logarta	16,760 votes
Leandro Tojong	16,623 votes

Wherefore, without annulling the elections in the 102 contested precincts of the City of Cebu but considering the valid votes therein, the protestant still obtains a majority of 137 votes in the entire Second Congressional District of Cebu. The Tribunal, therefore and hereby, declares Vicente Logarta as the duly elected Representative for the Second Congressional District of the Province of Cebu, and unseats the protestee, Leandro Tojong. In fairness to the protestee, who had not personally or directly participated in the commission of the frauds and terrorism but was only a beneficiary to such commission by a bigger political machinery in the Province of Cebu, the Tribunal makes no pronouncement as to costs.

So ordered.

Padilla, Bautista Angelo, Medina, Ramos, Fornier and *Rilloraza, Jr., members*, concur.

Judgment for the protestant.

[ETHR No. 47. February 28, 1953]

TAMANO BAKARAMAN, protestant, *vs.* MOHAMAD ALI DIMAPORO, protestee

ELECTION PROTESTS; WHEN ENTIRE ELECTION MAY BE ANNULLED.—Annulment of at least over fifty per cent of the total number of votes is necessary in order to justify the annulment of an entire election. Where the total number of votes annulled and set aside in an election for representative of a congressional district represents only thirty-eight per cent of all the votes cast in the election, and the heavy majorities polled by the protestee in the remaining precincts of the district still gives him a safe majority, the proclamation of the protestee should be confirmed.

ELECTION PROTEST

The facts are stated in the opinion of the Tribunal.

Aguedo Agbayani for the protestant.
Emigdio Nietes for the protestee.

MEDINA, *M.*:

In the general election held on November 8, 1949, there were five registered candidates for the office of Member of the House of Representatives, in the lone representative district of Lanao, and according to the canvas of the Provincial Board of Canvassers, they received votes as follows:

Name of Candidates	Party	Votes Received
Mohamad Ali Dimapuro	Liberal	153,857
Tamano Bakaraman	Nacionalista	21,887
Kiram M. Adiong	Avelino Liberal	17,704
Andres H. Achocoso	Independent	1,397
Tirso Cabili	Independent	336

The Provincial Board of Canvassers on December 6, 1949, proclaimed Mohamad Ali Dimapuro, official candidate of the Liberal Party, as Representative-elect for the said province of Lanao. Within the period fixed by the rules of this Tribunal, Tamano Bakaraman and Kiram M. Adiong filed their respective motions of protest against the said proclamation. The protest of Kiram M. Adiong however, was subsequently withdrawn and the case was dismissed upon motion of the protestant therein, (ETHER, Case No. 48).

The present protest filed by Tamano Bakaraman alleges, among other things, the following:

"* * * *DURING ELECTIONS*"

* * * "(*a*) Special agents, armed guards were redoubled and roamed about the streets and barrios, intimidating people and preventing many electors from voting;

"(*b*) All polling precincts were heavily guarded by men, compelling electors to show their ballots after voting, and if found to be against the Liberal Party, electors were threatened and intimidated unless they vote 'Liberal', and no peaceful elector could go to the precincts to freely cast his vote without being subjected to unnecessary inconveniences and molestations by armed guards;

"(*c*) Municipal or provincial officials, armed special policemen, ex-convicts armed to the teeth, irresponsible minors, civil service employees and members of the Philippine Constabulary electioneered openly and actively inside the precincts, and committed, or aided, in one way or another, in the commission of frauds herein mentioned;

"(*d*) When opposition inspectors, watchers, or any authorized persons questioned the anomalous conduct of the elections, they were threatened with death and intimidated. In a particular case a sultan in Marantao, who was trying to object against an irregular procedure during election day, was outright shot by policemen of the place;

"(*e*) Liberal Party leaders, and sympathizers were allowed to carry arms during prohibition periods, even within the perimeter of the polling place in violation of the Election Code;

"(*f*) In the places where elections were simulated, armed groups of men styled as special policemen followed every elector going into the precincts to vote and compelled them to vote Liberal Party straight, such as, in Dansalan, Baroy, Malabang, and Maranding;

"(*g*) Elections were conducted by Lt. Camad Dimaampao, who had absolute disposal of all election supplies, coercing and intimidat-

ing electors with his armed men, such as, in Tamparan. He is a brother-in-law of the protestee;

"(*h*) In the various municipalities and municipal districts of Lanao either there was no actual voting on November 8 in the election precincts because the ballots had already been filled in the homes of District Mayors and other persons to whom the different Deputy Treasurers turned over the ballots, the respective polling places having been closed on the day of the elections, such as in Maguing, Gata, Taraka, Wato, Bayang, Marantao, Wao, and Tugaya, or, the elections were simulated, as by giving to a particular precinct ballots equivalent to about one-third only of the registered voters in a precinct, so that only very few electors actually were able to vote, the rest of the electors having been voted for later on, to assure a comfortable margin to candidates of the Liberal Party, including the contestee, such as, in Madalum, Bacolod and Tugaya;

"(*i*) Electors and party leaders who wanted to make complaints were not accorded access to government offices performing duties relative to the conduct of the elections. In one instance, in the afternoon of November 8, 1949, legal representatives of the opposition parties wanted to confer with the Provincial Treasurer to make it known and of record that more than 200 inspectors of the Avelino Liberal Party a like number of inspectors of the Nacionalista, some Liberal Party inspectors and some poll clerks, did not receive any election supply in their respective precincts and that there was no actual voting in their respective polling places. Instead of recording the complaints of the inspectors, all of these persons complaining, particularly the lawyers, were forcibly thrown out of the building at the point of grease guns, tommy guns and all sorts of arms, at the instance of the Provincial Treasurer and his men.

"(*j*) The Provincial Treasurer, conniving in an unholy alliance with the municipal officials of Dansalan, misrepresented facts in his report to the Commission on Elections, and maintained an attitude of delay and disregard of every complaint filed with him, such as, complaints relative to the illegal transfer of precincts, losts precinct, and illegal registration;

"(*k*) The Acting Provincial Fiscal was nowhere to be found at Dansalan, so that it was extremely hard for the Protestant to make on the spot reports on election day. The following day, around two hundred inspectors, poll clerks of all the parties appeared personally before him to swear affidavits. He maintained his partial attitude, in spite of the insistence of the inspectors and poll clerks and swore only selected affidavits of a poll clerk purporting to incriminate some Nacionalistas, but refused to swear all affidavits incriminating Liberal Party leaders;

"(*l*) On the day of the elections, many precincts could not be found, and all complaints for illegal transfer of precincts stood unheeded and disregarded so that many voters were prevented from voting;

"(*m*) Days before election, and on the day of the elections, accomplished official ballots were distributed by leaders of the Liberal Party within the precincts to be used by the electors in voting;

"(*n*) Election returns were either falsified, manipulated or otherwise illegally altered to favor the protestee herein, and other Liberal Party candidates;

"(*o*) Certified copies of election returns were refused to be furnished to parties requesting therefor;

"(*p*) Wholesale frauds and irregularities have also been openly and scandalously committed in Iligan, Kolambugan, Kauswagan, Baroy, Lala and other Christian towns of Lanao. Almost all precincts were heavily guarded by armed special policemen, compelling the people to vote 'Liberal' and inspectors to read the word AVELINO in

cases where votes are written AVELINO LIBERAL. Officials of the PACSA and PRATRA gave all kinds of aid to people on the condition that they openly vote Liberal; * * *"

Several legal incidents took place in this case. On December 23, 1949, a motion to dismiss the protest was filed by the protestee on the ground that the Tribunal "had no jurisdiction to take cognizance of the same." The said motion was discussed and argued by the parties, and on April 13, 1950, the motion was overruled by the Tribunal.

On February 4, 1950, protestant Tamano Bakaraman filed a motion to "strike out" the answer of protestee Mohamad Ali Dimapuro on the ground that said answer was filed out of time. The parties presented exhaustive evidence to show the date when the protestee was served with summons, and the date when he filed his answer and on April 13, 1950, the Tribunal sustained protestant's motion to the effect that the answer was filed out of time and accordingly, the protestee's answer was ordered stricken out. The protestee therefore was left without an answer, and this being an election case in which the public has an interest, a general denial was deemed entered for the protestee in lieu of the answer.

Then came the taking of the deposition of numerous witnesses, who could not come to Manila and who had to testify in the province of Lanao. Both parties took time to prepare the depositions of their respective witnesses and to forward them to this Tribunal. They were finally forwarded and received by the Clerk of Court of this Tribunal on December 29, 1951.

The worst delay, however, was due to the inability of the parties and of this Tribunal to have access to the ballot boxes and election paraphernalia used in the Province of Lanao in the election of 1949. Said ballot boxes and election paraphernalia were then under the jurisdiction and control of the Senate Electoral Tribunal in connection with the Senate election protest filed by Claro M. Recto et al., protestants *versus* Quintin Paredes et als., protestee, Senate Electoral Case No. 3. And on August 19, 1950, the hearing of the present case was postponed until further assignment upon motion of the protestant, in order to enable the parties and this Tribunal to obtain from the Senate Electoral Tribunal the ballot boxes and election paraphernalia involved in this protest. After three years waiting, on November, 1952, the said ballot boxes and election paraphernalia were at last placed under the control and disposal of this Tribunal.

An impressive array of witnesses was presented by the protestant in this case to prove the commission of frauds and irregularities alleged in the motion of protest. The evidence tends to establish that persons below the age

requirement, without legal residence or without any educational qualifications, were registered in Lanao as qualified voters in violation of the election code; that deceased persons were not cancelled from the list of voters; that double, triple and quadruple registrations were made; and that fictitious names were entered in the list of voters. And that as a result of this procedure, the list of voters were "padded" to such an extent that in some municipalities and municipal districts, the number of registered voters is bigger than the number of registered inhabitants as found in the national census of 1948, (please see Census of the Population of the Philippines for 1948, Exhibit A–7). In addition, the protestant tried to prove that Nacionalista voters, although qualified to vote, were not able to register due to the intimidation, molestations and illegal practices resorted to by the Board of Inspectors and the Special Policemen.

The protestant also tried to establish that in some municipalities and municipal districts no election was actually held on the election day; that the ballot boxes and the election paraphernalia were not delivered to the corresponding electoral precincts but were taken to the houses of the District Mayors or to the headquarters of Lt. Camad Dimaampao of the Philippine Constabulary and there the official ballots were prepared and filled up by Liberal Party Leaders or by persons allowed to do so by Lt. Dimaampao. That the Liberal Inspectors and the Poll Clerks did not report to their respective precincts and the only ones who reported for duty on election day, were the Nacionalista and Avelino Party Inspectors, but could not do anything because the ballot boxes and the election paraphernalia were not there; that the voters who wanted to vote awaited in vain for several hours and finally had to return to their homes in disappointment or were driven away from the election precincts by the Special Police. There was actually no election and no voting held in those places.

That the commission of said irregularities was made possible due to the collusion of the local officials with the Special Police Force; the Special Policemen took care of terrorizing the voters in every conceivable way. Persons who were known Nacionalistas were taken to the headquarters of Lt. Dimaampao and were made to swear before the Koran that they would side with the Liberal Party candidates.

It was also claimed that the proper complaints and reports had been filed with the local authorities and with the Commission on Elections but no positive results were obtained.

On the other hand, an equally impressive array of witnesses, many of whom are public officials, was presented by the protestee; they denied that any irregularity was

committed in the registration of voters and in the preparation of the list of voters. They declared that the registration was conducted regularly and in accordance with the law. They vehemently denied that no election was held in some municipalities and municipal districts of Lanao and stated that the supervisors of the Commission on Elections can bear witness to the fact that the election in Lanao was peaceful, orderly and above board.

That if there are more registered voters than registered inhabitants in some municipalities and municipal districts of Lanao, it is not due to any padding nor to the illegal registration of persons who were not qualified to vote or who were otherwise disqualified from voting but to the fact that the Census Supervisors were not able to take the correct census of all inhabitants because many Moros thought that the purpose of the Census Supervisors was to list their names and addresses for tax collection purposes and hence, many of them went to the mountains to avoid registration, and were never listed by the census enumerators.

After reading the voluminous records of this case and the lengthy testimony of witnesses presented by both sides, it may well be said that the issues involved in this protest may be condensed into two principal subject matters, to wit: (1) the alleged padding of the list of voters, and (2) that no actual voting was held in the Province of Lanao.

ALLEGED PADDING OF THE LIST OF VOTERS

It is well to remember that the list of voters as prepared and used in the 1947 election was the basis for the list of voters used in the election of 1949 (sec. 95, Revised Election Code). In the 1947 election, there were 165,265 registered voters in the entire province of Lanao (Exh. A–3, Protestant's Memorandum, page 5), and the election code requires that the 1947 voters be carried in the permanent list to be used in the succeeding elections "with such additions, cancellations and corrections as may be proper." (Sec. 103, Election Code.) In regard therefore to the 165,265 voters registered in the year 1947, there can hardly be any question. They belong to the permanent and undisputed list of voters registered in 1947 and it was the ministerial duty of the Inspectors to transfer them to the 1949 list of voters. The so-called "padding" therefore does not affect and cannot refer to the 165,265 voters appearing in the old list. The issue of "padding" refers solely to the new voters who were registered in 1949.

When a person applies for registration or is registered as a voter, any "elector, candidate or watcher" has the right to challenge him and it is the duty of the Board of Inspectors to examine the challenged person, to receive

evidence regarding his qualifications and to decide the matter within three days thereafter. (Sec. 115, Election Code.) The voter or the challenger, whoever is aggrieved by the decision of the Board of Inspectors, may apply within twenty days after the last registration day to the Circuit Justice of the Peace Court, to the Justice of the Peace of the provincial capital or to the Judge of the Court of First Instance, for an order directing the inclusion or the exclusion of the voter as the case may be; the decision of the Justice of the Peace Courts is appealable to the Judge of the Court of First Instance whose decision is final. (Secs. 118, 119, 121, Election Code.)

The procedure fixed by the law for the inclusion and exclusion of voters is clear and definite; the law is liberal and easy precisely to give every one ample opportunity to ask for the inclusion or exclusion of persons who may be admitted or refused in violation of the law. And the decision of the judge of the Court of First Instance is *final,* precisely because the law wants to put an end to all wranglings and disputes concerning the qualifications of voters, and so that the list of voters as finally corrected may serve as official guide in election contests and in all government proceedings. And following the provision of the Electoral Code, Atty. Domacao Alonto, one of the attorneys who declared for the protestant, testified that as Campaign Manager of the Nacionalista Party in the Province of Lanao and at the same time as candidate for Senator in the Nacionalista ticket, he filed numerous exclusion and inclusion proceedings before the competent courts of Lanao within the time fixed by the law (p. 62, Exhibit 1). The said proceedings were however abandoned and presumably, the petitions were dismissed for lack of interest.

It can be seen therefore that this is not the first time that the question of padding is raised. It was raised before the competent Courts of Lanao in accordance with and within the periods fixed by law; it was likewise raised before the Electoral Commission, a Constitutional Body enjoined by the Constitution to have "exclusive charge of the enforcement and administration of all laws relative to the conduct of elections" and called upon by the law, to have "direct and immediate supervision over the provincial, municipal and city officials designated by the law to perform duties relative to the conduct of elections." The decisions, orders and rulings of the Commission shall be subject to review only by the Supreme Court. (Sec. 2, Art. IX, Const.) Numerous communications and telegrams were sent to the Commission on Elections on this subject and the said Constitutional Body actually assumed and exercised jurisdiction over the so-called padding and on October 28, 1949, the Commission adopted the following resolution:

"PER CURIAM:

Según los datos oficiales que obran en esta Comisión, aparecen que en ciertos distritos municipales de la Provincia de Lanao, se han registrado un número de votantes inscritos mayor que el número de habitantes de dicho distrito, a saber:

En el distrito municipal de Gata se inscribieron 5,536, cuando el número de sus habitantes es solo de 3,881; en el distrito municipal de Madalum, se inscribieron 5,132, siendo su población tan solo de 4,699; en el distrito municipal de Marantao, se inscribieron 4,048, siendo su población tan solo de 2,494.

También se advierte que en ciertos distritos números de votantes inscritos no esta en proporcion con el numero de habitantes, como se demuestra en la siguiente relación:

	Inscritos	Poblacion
Bacolod	4,733	7,728
Bayang	3,216	4,817
Butig	2,771	3,437
Ditsa-an Ramain	7,176	9,983
Kapai	780	1,476
Madamba	5,022	6,877
Munai	2,076	2,549
Nungan	3,048	3,736
Tatarikan	4,022	4,395

Estos datos claramente demuestran que los censos son falsos y ficticios, porque en unos el número de votantes inscritos excede del número de habitantes del distrito, y en otros porque el número de votantes inscritos es desproporcionado con el número de habitantes del distrito, pues tales cifras demuestran que se han inscrito muchas personas menores de edad.

Para remediar y salvar esta situación anomala y prevenir que el sufragio en esos destritos ya mencionados sea una farsa, se RESUELVE pedir la ayuda y cooperación de los jueces de paz de dichos distritos para que juntamente con representantes que esta Comisión ha de designar para esos distritos municipales, recorra esos distritos para revisar los censos e investigue los datos y papeles relativos a esos distritos, para comprobar y revisar el número de electores genuinos inscritos o ficticiamente inscritos; caso de serle imposible una recorrida física por esos distritos, que se valga de otros medios oficiales para la revisión de la lista de esos electores, y si a su juicio ha habido inflación, que proceda, con el representante de esta Comisión a tomar la acción correspondiente, el juez de paz cancele la inscripción de los electores imaginarios, notificando de esta acción a las juntas electorales respectivas en esos distritos y que la acción tomada por dichos juez de paz sea notificada esta Comisión inmediatamente.

"Para la fácil ejecución de esta acción de la Comisión, se invita a los representantes de los partidos Nacionalista y ALP que han denunciado estos hechos, y a todos los partidos, que ellos asistan y cooperen con el juez de paz y nuestro representante designado en dichos distritos.

"Se instruye el Secretario de esta Comisión, para que notifique de esta resolución a los jueces de los distritos mencionados, para su acción inmediata, así como disponga el pronto envio, de los representantes de esta Comisión, y por la primera oportunidad viable, avisando de ellos a los partidos denunciantes.

"Asi se ordena:" (Exhibit 3-E)

In spite of the action taken by the Commission on Elections, the protestant herein and the Nacionalista Party for that matter, were not able to substantiate the

charge of "Padding," and the Commission on Elections took the view that the same was not true. The Commission's report to the Chief Executive dated February 15, 1950, says in part the following:

"Estas alegadas anomalías que se referían principalmente a la poblacion electoral de Lanao y la real y efectiva de la misma se han suscitado ante la Comisión de Elecciones para su debida resolución y esta, a su vez, como primer paso, ha dado una amplia oportunidad al partido denunciante para ayudar a la Comisión en su tarea de depurar responsabilidades. Tan es así, que ha facilitado a dicho partido los servicios de algunos empleados de la Comisión para acompañar a los denunciantes a constituirse en Lanao e ir a los lugares mas reconditos de la provincia, para investigar y comprobar las alegaciones contenidas en la denuncia, a saber: si es cierto o no, que la población de Lanao es actual y realmente menor que el número de electores inscritos en los censos de los diferentes precintos electorales y emitieron sus votos en anteriores elecciones.

"El Director del Censo, por un lado; sostiene la verdad de las cifras que aparecen en el censo públicado, alegando que esas cifras fueron suministradas por sus enumeradores. Es de esperar esta actitud de dicho funcionario. Por otro lado, tenemos a las autoridades provinciales de Lanao, quienes afirman que no todos los moros residentes en la provincia han sido enumerados, y consiguientemente, el censo official de población, tal como aparece en la publicación oficial al efecto no es exacto. Es mucho menor que la población real y efectiva de Lanao. La inexactitud del censo de población, segun las autoridades de la provincia, se debe a que los enumeradores del Censo destinados a Lanao no pudieron internarse en la provincia por miedo a los moros juramentados; pues, la mayoría de los moros, teniendo la creencia errónea de que el objeto de aquellos enumeradores del Censo era apuntar los nombres de los habitantes moros para la consiguiente imposición de algunos impuestos sobre ellos, se remontaron al interior, ocultandose a los enumeradores del Censo, llegando muchos a juramentarse.

Considerando estas circunstancias que rodean al caso de Lanao, y teniendo en cuenta que el testimonio de las autoridades provinciales, por residir continuamente en la provincia y estar en constante contacto con sus habitantes, debe recibir mayor grado de credibilidad que el de otros que no se hallan en sus mismas condiciones, no puede haber, en este caso particular, otra conclusión distinta de la de que los censos de población verificados por los enumeradores oficiales del Buró de Censo, que tuvieron miedo de constituirse en el interior de toda la provincia, no pueden servir de base de comparación para determinar el actual número de habitantes de la provincia y sobre dicha base, fijar el verdadero número de electores que deben de estar inscritos en la misma.

"Pero, admitiendo, por un momento, la supuesta inflación del numero de votantes inscritos en los censos electorales, los diferentes partidos políticos existentes en el país deben saber que en nuestro Código Electoral Revisado existen disposiciones positivas y claras para remedias este caso particular de anomalía en la cuestión de la inscripción de electores. Es de conocimiento público que en lo que respecta al ejercicio del derecho del sufragio, las leyes electorales han establecido procedimientos prolijos para salvaguardar la pureza del mismo mediante la exclusión o inclusión de votantes en el censo electoral. Se han establecido bajo estos procedimientos cinco recursos para remediar cualquiera irregularidad que pueda por inadvertencia, ignorancia y malicia cometerse en perjuicio de cualquier elector. Léanse sino los artículos 117, 118, 119, 120 y 121 del Código Electoral Revisado.

El Partido Nacionalista ha tenido todas las oportunidades para hacer uso de los mencionados remedios que se proveen en la ley para corregir cualesquiera errores o irregularidades que se hubiesen cometido en la preparación de los censos electorales, y, en realidad, dicho partido ha presentado peticiones para cancelar nombres de electores de los censos electorales en la provincia de Lanao, bajo el fundamento de que esos electores no existen y que los mismos fueron tan solo el resultado de unas combinaciones hechas por los miembros de las correspondientes juntas de inspectores de elección; pero el caso es, que ese mismo partido desistió de continuar los procedimientos o a sustancias sus acusaciones, por razones que solo los directores de dicho partido deben saber." (Report, pp. 10–11, Exhibit 3.)

In his motion of protest filed before this tribunal, the protestant has deemed it wise to raise again the same issue of "padding." This issue is clearly an attack against the registry list of voters wherein the names of voters allegedly not possessing the legal qualifications to vote, have been included. It is a re-inquiry into the qualifications of already registered voters, and seeks to correct the list of voters used in the election of 1949. In effect, it is tantamount to a revival of the petition for "inclusion in and exclusion of voters from the list of voters," which had utterly failed in the courts of Lanao and in the Commission on Elections in 1949. Does this Tribunal have jurisdiction over such matter?

The inclusion and exclusion of voters is governed by the Revised Election Code, and section 118 of said Code, in part provides:

"The Judge of the Court of First Instance and the justice of the peace of the capital shall have concurrent jurisdiction throughout the province, and the circuit justice of the peace shall have in the municipalities forming his circuit concurrent jurisdiction with the former over all matters of inclusion in and exclusion of voters from the list, but the one to whom the application is first presented shall acquire *exclusive jurisdiction* thereon."

It is therefore clear that exclusive jurisdiction is vested by the law upon the Circuit Justices of the Peace, the Justice of the Peace of the Provincial Capital and the Judge of the Court of First Instance, whoever of them first takes cognizance of the case over all matter of inclusion in and exclusion of voters from the list fo voters. And the decision of the Justices of the Peace may be appealed only to the Judge of the Court of First Instance within five days from notice, and the latter's decision is final and unappealable. (Sec. 118, Election Code.)

To hold that the Electoral Tribunal has jurisdiction over the inclusion in an exclusion of voters from the list of voters, would therefore destroy the exclusiveness of the jurisdiction vested by the law upon the Circuit Justice of the Peace Courts, the Justice of the Peace of the provincial capital and the Judge of the Court of

First Insance, and would furthermore destroy the finality of the decision of the Judge of the Court of First Instance in inclusion and exclusion proceedings.

And to remove any doubt on this legal point, the Congress has seen fit to provide a procedure or a rule of conduct in all election contests, to the effect that "in election contest proceedings, the registry list, as finally corrected by the board of inspectors, *shall be conclusive* in regard to the question as to who had the right to vote in said election." (Sec. 176, Election Code.)

"VOTERS' LIST.—The appellant contends in this case that the voters' list of 1931 was copied by mistake from that of 1928 with regard to the qualification of certain voters. *Held*: That it is too late to assail the voters' list of 1931, and inasmuch as it has been finally corrected, the same is conclusive with respect to those entitled to vote at that election." (Dizon *vs.* Cailles, 56 Phil. 695, 696.)

To our mind therefore, the Electoral Tribunal is not only not vested with original or appellate jurisdiction in inclusion and exclusion proceedings, but is prohibited by the law from reopening the question "as to who had the right to vote." The registry list, as finally corrected, is conclusive in all election contests and this Tribunal has no other alternative but to respect and follow the law. (Dizon *vs.* Cailles, 56 Phil., 695; Fernandez *vs.* Mendoza, 57 Phil., 688).

The issue of padding affects essentially the qualifications and disqualifications of voters and to revive and reopen the issue of padding is equivalent to reopening an investigation over the qualifications of the registered voters. This would involve a long and tedious procedure, and we do not believe the framers of our Constitution ever intended to give such work to the Electoral Tribunal. Section 11, Article VI of the Constitution provides that the Electoral Tribunal shall be the sole judge of all contests relating to the election returns and *qualifications of Members of the House of Representatives*. There is nothing in the Constitution that empowers the Electoral Tribunal to open an inquiry into the qualification of voters. Its power is expressly limited to an inquiry into the qualifications of the Members of the House of Representatives.

Considering therefore the legal and constitutional provisions on the subject and the fact that the question of "padding" had previously been submitted to the corresponding courts of Lanao, which have exclusive and final jurisdiction over all inclusion and exclusion proceedings of the province, and also to the Commission on Elections which has "exclusive charge of the enforcement and administration of all laws relative to the conduct of elections", we are constrained to hold, as we do hereby hold,

that the Electoral Tribunal does not have jurisdiction, original or appellate, over inclusion in and exclusion of voters from the list of voters, and that the power to inquire into the qualifications or disqualifications of the persons listed in the list of voters, as finally corrected by the Board of Inspectors, and to revise, review or correct the said list, is not within the realm of the functions and power granted by the Constitution and by the laws of our land to the Electoral Tribunal who "shall be the sole judge of all contests relating to the election returns and qualifications" of Members of the House of Representatives and not of registered voters.

In the case of Fernandez *vs.* Baes, ETHR Case No. 23, promulgated on December 29, 1951, this Tribunal said:

"* * * If a minor had been able to register as a voter and is subsequently allowed to vote, his ballot, if in all other respects valid, will have to be counted, without prejudice to his prosecution in appropriate proceeedings. In a resolution unanimously adopted by this Tribunal on January 26, 1951, in connection with the instant case, we said:

> 'The protestee's motion challenges, in effect, the list of voters prepared prior to the last general election. These lists can only be a changed within the period and in the manner provided by law (*see* secs. 117 *et seq.*, Revised Election Code.) They can not be purged at any other time and in any other way (see 20 C. J., 86). To allow them to be mutilated after the election will lead to confusion and unconscionable delays.
>
> 'Proceedings for exclusión from the rolls should have been instituted, according to law and prior to the election, against persons who registered in more than one precinct and against minor who, by the Constitution and by statute, are disqualified from voting. These persons, of course, may be prosecuted, together with those who voted more than once or who impersonated absent voters, but evidence against them cannot be obtained through this Tribunal, in a pending election contest, by the protestee who does not represent the prosecution." (Fernandez *vs.* Baes, ETHR Case No. 23).

The reason for this rule is found in section 176 (F) of the Election Code which clearly provides that in all election contest proceedings, the list of voters, as finally corrected by the Board of Inspectors, is final and conclusive upon the courts. The Supreme Court of the Philippines, in several decisions, applied the same rule. (Dizon *vs.* Cailles, 56 Phil., 656).

"*Failure to challenge Voters.*—With regard to the alleged illegal votes cast in precinct 4 as neither of them was challenged during the legal period, any evidence tending to show that those voters were registered and that they voted although not possessing the necessary qualifications is immaterial. (Dejarme *vs.* Castañeda, G. R. No. 30611, promulgated April 22, 1929, not reported.)" (Fernandez *vs.* Mendoza, 57 Phil., 688).

"Where alleged illegal votes were cast in a certain district, as they were not challenged during the legal period, any evidence to show that these voters were registered and they voted although

not possessing the necessary qualifications is immaterial." (Fernandez *vs.* Mendoza, 57 Phil., 687.) (Citing Dejarme *vs.* Castañeda, unreported, G. R. No. 30611.)

In the same case, however, of Fernandez *vs.* Baes, (*supra*) the protestee in that case prayed that 15 votes purporting to be the votes of dead or absent registered voters be rejected, and that the election be annulled by reason of that irregularity. In deciding this question, this Tribunal said:

"Protestee's second ground for annulment is premised on the ground that 15 dead and absent persons had been registered as voters in this precinct and that ballots were actually cast in their behalf. The evidence adduced by the protestee on this point covers only about half that number. There seems to be no doubt that certain persons absent during the election now appear in the registry list of voters in this precinct to have voted therein. One of them is Dean Conrado Benitez, who was in Europe at the time. Considering, however, that the ballots cast by said dead and absent voters have not been identified, and that the said irregularity is not serious enough to warrant the disenfranchisement of the large majority of the voters who prepared and cast their ballots according to law, we would not be justified in annulling the election in this precinct." (Fernandez *vs.* Baes, ETHR Case No. 23.)

A distinction therefore should be made between the case of registered voter who is disqualified to vote by reason of minority, illiteracy or for lack of residence, and the case of a registered voter who is absent or who dies before the election or who is non-existing. In the case of a minor, illiterate or non-resident who succeeds in registering his name in the list of voters and who actually votes during the election, the question involved is the legality of his inclusion in the list of voters; there is no question as to the genuineness of his vote. The question will revolve soley upon his qualifications as a voter. On the other hand, when a vote purporting to be the vote of a person who is dead, non-existent or absent, is identified and marked, there is absolutely no question concerning the qualifications of the voter. The question is merely over the validity or nullity of a fake vote. Here lies therefore the fundamental difference. In the first case, the question revolves around the qualifications of voters and their inclusion or exclusion from the list of voters; and in the latter case, the question involved is simply the nullity of a fake vote. When the vote is fake and false and the ballot is marked and clearly identified, the vote must be rejected. But in case the protestant has utterly failed to identify such fake, feigned, or false ballots of deceased, absent or non-existing persons, as in the instant case, the rule is that enunciated in the Fernandez *vs.* Baes (*supra*). In the instant case, the protestant failed to prove who are deceased, absent or

fictitious persons who have been recorded as having cast their votes during the election. The records do not show the precincts or even the total number of such persons. The fake ballots are not identified nor marked. The rule therefore laid down in the afore-cited case of Fernandez *vs.* Baes (*supra*) applies with all its force and effect.

No Election was held

The oral evidence of the witnesses for the protestant is in sharp contradiction with the testimony of the witnesses for the protestee. The witnesses for the protestant declared that terrorism, intimidation, coercion and abuses of all kinds were rampant throughout the district not only before but during and even after the election. Attorneys Leodegario Diokno and Pumarada were not spared. They, too, were threatened and Attorney Diokno was nearly killed. Even Senator and Mrs. Pendatun had a taste of this unsavory tactic.

And as a fitting climax to the frauds and abuses committed, it is claimed that in some precincts of Lanao, on election day, no voting and no election at all was held. A certain Lieutenant Camad Dimaampao, brother-in-law of the protestee, is easily the most controversial figure in that accomplishment. It is said that the ballot boxes and election paraphernalia were not delivered to the polling places, but were brought to the houses of the District Mayors and to the headquarters of Lt. Camad Dimaampao and there the ballots were prepared and filled-up. The Nacionalista inspectors as well as the Avelino Liberal Party inspectors who wanted to perform their duties reported to their precincts at 6 o'clock in the morning only to find that the Liberal Party inspectors were absent and that no ballots, no ballot boxes and no election paraphernalia could be found. The voters awaited in vain, and as the assemblage became bigger, the Special Policemen drove the people away telling them that the election was all finished. The complaints aired against this "new method" was not attended to by the local officials and all complaints and protests were in vain.

On the other hand, the witnesses for the protestee denied that the ballots, ballot boxes and election paraphernalia were taken to the houses of the District Mayors or to the headquarters of Lt. Camad Dimaampao and declared that the election was conducted peacefully, normally and without any incidents in all precincts of Lanao. They declared that the Commission on Elections sent election Supervisors on the day of the election to supervise the election in Lanao and that the said election supervisors performed well their duties and reported that the election in Lanao was "quiet and peaceful" and that "there was not a single casualty reported on November 8, 1949".

In view of the diametrically conflicting testimonies of the witnesses for the protestant and the protestee, the Tribunal, *motu propio*, ordered the opening of the ballot boxes involved in the protest and saw the actual condition of the contents of the said ballot boxes. We found in many precincts that practically all the ballots written in ordinary Christian penmanship have been written just by a few hands; that no election returns, no tally-sheets, and no list of voters could be found inside the ballot boxes; in some ballot boxes, the ballots found on which the names of the candidates were written are not official ballots but broken pieces of pad papers. In the precincts where official ballots were used, some of the ballots were manifestly not separated from the stubs one by one, but were torn or cut in groups; in many ballots, the imprint of the names written on the previous ballot is clearly visible, which shows that the ballots were still on the stubs when the names were written.

The physical appearance of the ballots lend credence to the testimony of the witnesses for the protestant. That frauds and irregularities were committed in a big scale in several municipalities of Lanao, seems to be a well-established fact. In some municipalities and municipal districts, we believe that no election was held in the manner contemplated by the law.

It is to be regretted, however, that not all the municipalities and municipal districts of Lanao are involved in this protest. The protest was prepared and signed by a competent member of the bar, and was filed under the guaranty of the oath of the protestant himself. The only municipalities and municipal districts involved in this protest over which the Tribunal has acquired jurisdiction are those mentioned in paragraphs (*f*) (*h*) and (*p*) of the protest, and they are the following:

1. Dansalan
2. Baroy
3. Malabang
4. Tamparan
5. Maguing
6. Gata
7. Taraka
8. Bayang
9. Marantao
10. Wato
11. Tugaya
12. Madalum
13. Bacolod
14. Iligan
15. Kolambogan
16. Kauswagan
17. Lala
18. Walo
19. Maranding

No other municipality or municipal district is involved in this protest; hence, the election returns in all the other municipalities and municipal districts of Lanao over which no protest was filed within the period prescribed by the rules of this Tribunal can not now be disturbed.

"The Statutes generally require that anyone desiring to contest an election must file and serve a notice and statement of the grounds of contest within a certain number of days after the election, or the

official declaration of the result. These provisions are regarded as *mandatory*, and cannot be waived; and unless strictly complied with, the court is without jurisdiction to proceed." (29 C. J. S., 370.)

"The Statute prescribes that the contest must be commenced within twenty days after the result of that election has been declared. Code 1923, Secs. 545, 552. This provision has been held to be jurisdictional. Pearson *vs.* Alverson, 160 Atl. 265, 49 So. 756; Groom *vs.* Taylor, 235 Ala. 247, 251, 178 So. 33; Black *vs.* Pate, 130 Ala. 514, 30 So. 434." (188 So. 891.)

"The statement of the grounds of contest must be filed within the time limited, to give jurisdiction of the case." (Farlow *vs.* Honghan, 87 Ind. 540.)

We therefore have no jurisdiction over the election held in municipalities and municipal districts not included in the motion of the protest, and this rule is specially true in the instant case, because the protestee's answer was ordered stricken out by this Tribunal. Although the protestee was not directly declared in default, his answer having been stricken out, his position is similar to that of a defendant who is declared in default, because he was prevented from setting up any affirmative or special defenses and to all intents and purposes he stands like one in default, and therefore this Tribunal can not grant to the protestant a relief different from or more than that which is prayed for in his motion of protest. (Molina *vs.* De la Riva, 6 Phil., 12; Fabros *vs.* Villa Agustin, 18 Phil., 336; Javelona y Lopez *vs.* Yulo, 31 Phil., 388.)

With respect to "Wao" and "Maranding" which are mentioned in paragraphs (*f*) and (*h*) of the motion of protest, the records do not show that they constitute separate electoral precincts. The Electoral Commission and the Provincial Board of Canvassers did not include them in the list of municipalities and municipal districts, (Exhibits A–1 and A–2) and undoubtedly they are absorbed or included in one or more electoral precincts included in the list.

Out of the 19 municipalities and municipal district involved in this protest, including Wao and Maranding, we are satisfied that the election was regularly and legally held in the following six municipalities:

	Dimapuro Votes	Bakaraman Votes
1. Dansalan	4,510	2,006
2. Iligan	2,296	1,938
3. Kolambugan	797	888
4. Malabang	1,638	736
5. Kauswagan	760	908
6. Lala	688	626

Judging from the result of the election in the said six municipalities and judging from the fact that the above-mentioned municipalities are inhabited almost exclusively by Christian Filipinos and that they are easily accessible

by ordinary means of transportation and the fact further that the supervisors sent by the Commission on Elections have frequently inspected and supervised the said municipalities, the Tribunal is not ready to conclude that the election in the said municipalities was not held in accordance with the law. It will be noticed that the voting was quite close and at least in two municipalities, namely, Kalambogan and Kauswagan, the protestant polled more votes than the protestee. All the above facts considered together, in conjunction with the testimony of the witnesses for the protestant, the Tribunal believes and hereby holds that the election returns in the said six municipalities should be sustained.

With respect, however, to the remaining eleven municipalities involved in the motion of protest, we are satisfied that no election was held in the manner provided for in the law, and that the preponderance of evidence justifies the annulment of the "election", in the said municipalities and municipal districts.

"This manner of conducting an election cannot be tolerated. The law should be carefully studied by the election officials and strictly complied with. While courts always hesitate before declaring an election absolutely void, as it results in disfranchising innocent voters, we feel bound, under the facts in this case to so declare." (Manalo *vs.* Sevilla, 24 Phil., 609, 626, 627.)

"When the fraud or intimidation is flagrant and its influence diffusive so that it becomes impossible to separate the good votes from the bad and determine the true result of all the good ballots cast, the returns should be avoided." (Gardiner *vs.* Romulo, 26 Phil., 521, 523.)

"Courts, of course, should be slow in nullifying and setting aside the election in particular municipalities or precincts. They should not nullify the vote until it is shown that the irregularities and frauds are so numerous as to show an unmistakable intention or design to defraud, and which do, in fact, defeat the true expression of the opinion and wishes of the voters of said municipality or precinct. The evidence in the present case shows an unmistakable intention and design on the part, not only of the election inspectors, but many of the voters, to defeat, by the methods adopted, the true expression of opinion, through the ballot, of the people of said municipality. When the election has been conducted so irregularly and fraudulently that the true result cannot be ascertained, the authorities need no longer be cited in its support that whenever the irregularities and frauds are sufficient to defeat the will of the people of the particular municipality or precinct, the entire vote should be rejected and those who are guilty of such frauds and irregularities should be punished to the very limit of the law." (Garchitorena *vs.* Crescini and Imperial, 39 Phil., 258.)

We, therefore, hereby declare that the "election" held in the eleven municipalities mentioned hereunder was null and void; and the votes adjudicated by the Board of Inspectors and by the Provincial Board of Canvassers in favor of the registered candidates are hereby annulled

and set aside and should not be counted for any one of them.

The election is annulled and set aside in the following places:

Municipal Districts	Ali Dimapuro	Tamano Bakaraman
1. Bacolod	6,285	30
2. Baroy	879	228
3. Bayang	2,125	1,467
4. Gata	6,058	408
5. Madalum	6,091	5
6. Maguing	21,392	967
7. Marantao	3,743	969
8. Tamparan	3,901	546
9. Taraka	3,791	1,900
10. Tugaya	8,779	0
11. Wata	7,135	14
Totals	70,171	6,534

SUMMARY

After deducting the votes of the protestant and of the protestee in the eleven municipalities mentioned above, and summing up all the valid votes obtained by them in the municipalities and municipal districts where the election is upheld and declared valid and in the municipalities and municipal districts not involved in this protest, we have the following results:

Municipalities involved in the protest where the election is upheld and declared valid	Ali Dimapuro	Tamano Bakaraman
1. Dansalan	4,510	2,006
2. Iligan	2,296	1,938
3. Kolambogan	797	888
4. Malabang	1,638	736
5. Kauswagan	760	908
6. Lala	688	626
Totals	10,689	7,102

Municipalities and Municipal Districts not involved in the Protest—returns unquestioned by the protestant	Ali Dimapuro	Tamano Bakaraman
1. Tubod	936	344
2. Balo-i	3,011	833
3. Butig	1,868	866
4. Bubong	3,955	321
5. Binidayan	5,567	66
6. Ditsaan-Ramain	1,797	1,030
7. Ganassi	7,951	68
8. Kapai	446	199
9. Kapatagan	2,109	110
10. Lumbatan	3,691	1,695
11. Madamba	6,770	8
12. Masiu	5,312	322
13. Munai	2,386	0
14. Molundo	5,295	926
15. Matongao	907	94
16. Nunungan	5,039	4

17. Pantao-Ragat	1,932	321
18. Pualas	5,992	9
19. Saguiaran	3,629	916
20. Sungod	636	231
21. Tatarikan	5,839	16
22. Tubaran	1,903	568
Totals	76,971	8,949
GRAND TOTALS	87,660	16,051

The protestee therefore has a majority of 71,609 valid votes, over his closest opponent Tamano Bakaraman, the protestant herein.

In passing, we want to say that even if the election in all the 19 municipalities and municipal districts involved in the protest were annulled, in view of the protestant's failure to protest the election returns in the 22 other municipalities and municipal districts wherein the protestee polled heavy majorities, the result would be the same, and the protestee would still have a safe plurality in his favor.

The municipalities and municipal districts involved in the charge of "padding" mentioned in the protest are practically the same municipalities and municipal districts where the election is hereby annulled, with the exception of the municipal districts of Molondo, Pola, Lumbatan, Ganassi and Masiu. In annulling the election in the eleven municipalities and municipal districts mentioned above, actually we have also annulled the votes of all "padded" voters, in the municipalities and municipal districts mentioned in the protest, with the exception of Molondo, Pola, Lumbatan, Ganassi and Masiu; however, even if we should exclude the new registrants or all the new voters from the said five places, still the result would be unchanged.

We are not unaware of the fact that the total number of votes hereby annulled and set aside reaches the respectable sum of 76,713 votes, which represents 38 per cent of all the votes cast in 1949 election in the Province of Lanao. We believe, however, that the heavy majorities polled by the protestee in the remaining precincts of Lanao especially in the precincts not disputed in the protest, still give the protestee a safe majority which is unshaken by the annulment of 38 per cent.

In the case of Roque *vs.* Lava (ETHR No. 20) and in the case of Soliman *vs.* Taruc (ETHR No. 13), this Tribunal, quoted approvingly some American decisions, which established the rule that annulment of at least over 50 per cent of the total number of votes is necessary in order to justify the annulment of the entire election.

"In the election case of Sypher *vs.* St. Martin, the United States House of Representatives concluded that when two-thirds of the returned votes of a district had been rejected for intimidation, the remainder did not constitute a valid constituency and that there had been no valid election." (Hinds Precedents of the House of Representatives of the United tSates, Washington, 1907, pp. 221–222.

"In Morey *vs.* McGranie the House declared vacant a seat in a case wherein over half of the total votes of a district had been rejected for intimidation. (Ibid, pp. 222–224)".

We therefore hereby confirm the proclamation of the protestee Mohamad Ali Dimapuro as the Representative-elect for the lone representative district of Lanao province.

The Clerk of this Tribunal is instructed to send copies of this decision to the speaker of the House of Representatives, to the Commission on Elections, and to all offices that are entitled to know the result of this protest.

The protestant will pay the costs. So ordered.

Padilla, Reyes, Bautista Angelo, Crisologo, Soriano, and *Ramos, members,* concur.

Proclamation of protestee confirmed.

DECISIONS OF THE COURT OF APPEALS

[No. 8585–R. November 11, 1953]

MADRIGAL SHIPPING CO., plaintiff and appellant, *vs.* SANTIAGO GANCAYCO, defendant and appellee

1. COMMERCIAL LAW; COLLISION OF VESSELS; DAMAGES; PROTEST; ARTICLE 835, CODE OF COMMERCE, NOT APPLICABLE TO SMALL BOATS.—A motor launch used in the Manila Bay for carrying back and forth the members of the crew who were off duty cannot be considered as included in the denomination of vessel as specified in article 835 of the Code of Commerce. Therefore, when such a motor launch is sunk, protest is not a condition precedent for the recovery of the damages sustained by its owner. (Lopez *vs.* Duruelo, 52 Phil., pp. 231–235).
2. PLEADING AND PRACTICE; MOTION FOR DISMISSAL WITH RESERVATION TO SUBMIT EVIDENCE.—When defendant asked for the dismissal of the case in the court below he reserved his right to submit evidence in defense, should the motion therefor be eventually denied. The opposing party failed to object thereto; thus, in furtherance of justice, this case should be remanded to the court below. We do not believe this to be in violation of the ruling in Arroyo *vs.* Asur, 43 Off. Gaz., 54.

APPEAL from a judgment of the Court of First Instance of Manila. Panlilio, *J.*

The facts are stated in the opinion of the court.

Castaño & Ampil for appellant.
Emilio A. Gancayco for defendant and appellee.

MARTINEZ, *J.:*

The case is one of recovery of damages for the sinking and total loss of a motor launch known as "Tristan". After hearing, the Court of First Instance of Manila rendered judgment, the dispositive part of which reads as follows:

"In view of the foregoing considerations, the Court finds motion to dismiss, filed by counsel for defendant, well taken, and hereby dismisses this case, without costs. Defendant's counter-claim is also dismissed."

"So ordered."

Plaintiff Madrigal Shipping Co., Inc., comes now on appeal alleging:

"1. That the trial court erred in dismissing appellant's complaint for lack of a marine protest when the facts adduced during the hearing thereof sufficiently prove appellant's compliance with the said requisite; and

"2. That assuming *arguendo* the invalidity of appellant's marine protest, the trial court erred in dismissing the complaint since a protest is not required of the appellant's cause of action against the appellee."

Alongside the vessel "Y–10", then docked at Pier No. 10, was the "Tristan" on the morning of September 14, 1948, when it was hit by another motor launch, named *Greer*. The happening was recounted by Mariano C. del Mundo, officer of the "Y–10", as follows:

"Q. What accident was that?—A. When the Motor Launch "Greer" was coming out of Pier 10, it met the Motor Launch "Corps", and when they were about to meet, so as to avoid collision, the Motor Launch "Greer" changed its course by swerving to the left instead of to the right which was the right way.

"Q. What happened when the Motor Launch "Greer", in deciding to avoid collision with the Motor Launch "Corps", turned to the left?—A. She struck our Motor Launch along-side the "Y–10".

"Q. You mean she struck the Motor Launch "Tristan"?—A. Yes, sir.

"Q. Belonging to whom?—A. To the plaintiff, Madrigal Shipping Co., Inc.

"Q. Was the Motor Launch "Tristan" at the time of the impact moving?—A. No, she was tied up.

"Q. Was the engine of the Motor Launch "Tristan" started at that time?—A. No, the engine stopped because they were waiting for us.

"Q. Was there anybody on board the Motor Launch "Tristan" when it was struck by the Motor Launch "Greer"?—A. Yes, one of my crew, Alfonso Fonda, was there.

"Q. What did Alfonso Fonda do, if he did anything, at the time of the collision?—A. At the time I saw the "Greer" about to strike our launch, I shouted at him to jump and he jumped overboard.

"Q. What happened to the Motor Launch "Tristan" after it was struck?—A. It was entirely destroyed." (t. s. n. pp. 5–7)

The mishap took place at about 7:50 o'clock that morning.

"The only question to be decided in this appeal is whether a protest was filed on time, and whether it is a condition precedent for the filing of this action.

"After perusal of plaintiff's evidence, we are of the opinion that no protest was filed or, if ever, it was filed outside the 24–hour time provided by Art. 835 of the Code of Commerce. But, is protest necessary in the case at bar? In Lopez *vs.* Duruelo, (52, Phil., pp. 231–235) the Supreme Court said:

"* * * The article in question (835, Code of Commerce) is found in the section dealing with collisions, and the context shows the collisions intended are collisions of sea-going vessels. Said article cannot be applied to *small boats* engaged in river and bay traffic. The Third Book of the Code of Commerce, dealing with Maritime Commerce, of which the section on collisions forms a part, was evidently intended to define the law relative to merchant vessels and marine shipping; and, as appears from said Code, the vessels intended in that Book are such as are run by masters having special training, with the elaborate apparatus of crew and equipment indicated in the Code. The word "vessel" (Spanish, bugue", "nave") used in the section referred to was not intended to include all ships, craft or floating structures of every kind without limitation, and the provisions of that section should not be held to include minor craft engaged only in river and bay traffic. Vessels

which are licensed to engage in maritime commerce, or commerce by sea, whether in foreign or coastwise trade, are no doubt regulated by Book II of the Code of Commerce. Other vessels of a minor nature not engaged in maritime commerce, such as river boats and those carrying passengers from ship to shore, must be governed, as to their liability to passengers, by the provisions of the Civil Code or other appropriate special provisions of law.

"This conclusion is substantiated by the writer Estasen who makes comment upon the word "vessel" to the following effect:

" 'When the mercantile codes speak of vessels, they refer solely and exclusively to merchant ships, as they do not include war ships, and furthermore, they almost always refer to craft which are not accessory to another as is the case of launches, lifeboats, etc. Moreover, the mercantile laws, in making use of the words ship, vessel, boat, embarkation, etc., refer exclusively to those which are engaged in the transportation of passengers and freight from one port to another or from one place to another; in a word, they refer to merchant vessels and in no way can they or should they be understood as referring to pleasure craft, yachts, pontoons, health service and harbor police vessels, floating storehouses, warships or patrol vessels, coast guard vessels, fishing vessels, tow-boats, and other craft destined to other uses, such as for instance coast and geodetic survey, those engaged in scientific research and exploration, craft engaged in the loading discharge of vessels from same to shore or docks, or in transhipment and those small craft which in harbors, along shores, bays, inlets, coves and anchorages are engaged in transporting passengers and baggage." (Estasen, Der. Mer., Vol. IV, p. 195.)

In Yu Con *vs.* Ipil (41 Phil., 770), this court held that a small vessel used for the transportation of merchandise by sea and for the making of voyages from one port to another of these Islands, equipped and victualed for this purpose by its owner, is a vessel, within the purview of the Code of Commerce, for the determination of the character and effect of the relations created between the owners of the merchandise laden on it and its owner. In the case before us the *Jison,* as we are informed in the complaint, was propelled by a second-hand motor, originally used for a tractor plow; and it had a capacity for only eight persons. The use to which it was being put was the carrying of passengers and luggage between the landing at Silay and ships in the harbor. This was not such a boat as is contemplated in article 835 of the Code of Commerce, requiring protest in case of collision.

In Yu Con *vs.* Ipil, supra, the author of the opinion quotes a passage from the treatise on Mercantile Law by Elanco. We now have before us the latest edition of Elanco, and we reproduce here, in both Spanish and English, not only the passage thus quoted but also the sentence immediately following said passage; and this latter part of the quotation is quite pertinent to the point now under consideration.

"Says Elanco:

"Las palabras 'nave' y 'buque', en su sentido gramatical, se aplican para designar cualquier clase de embarcaciones, grandes o pequeñas, mercantes o de guerra, significación que no difiere esencialmente de la jurídica, con arreglo a la cual se consideran buques para los efectos del Código y del Reglamento para la organización mercantil, no solo las embarcaciones destinadas a la navegación de cabotaje o altura sino también los diques flotantes, pontones, dragas, ganguiles y cualquier otro aparato flotante destinado a servicios de la industria o del comercio marítimo.

"Aun cuando conforme a este concepto legal, parece que todo aparato flotante que sirve directamente para el trasporte de cosas

o personas, o que indirectamente se relacionen con esta industria, han de sujetarse a los preceptos del Código sobre propiedad, transmisión, derechos, inscripciones, etc., entendemos con el Sr. Benito (Obra cit.) y así ocurre en la práctica, que no son aplicables a las pequeñas embarcaciones, que solo están sujetas a los de la administración de marina para el servicio de los puertos o ejercicio de la industria de la pesca." Blanco, Der. Mer. Vol. II pág. 22).

"The words 'ship' (nave) and 'vessel' (buque), in their grammatical sense, are applied to designate every kind of craft, large or small, merchant vessels or war vessels, a signification which does not differ essentially from its juridical meaning, according to which vessels for the purposes of the Code and Regulations for the organization of the Mercantile Registry, are considered not only those engaged in navigation, whether coastwise or on the high seas, but also floating docks, pontoons, dredges, scows and any other floating apparatus destined for the service of the industry or maritime commerce.

"Yet notwithstanding these principles from which it would seem that any floating apparatus which serves directly for the transportation of things or persons or which indirectly is related to this industry, ought to be subjected to the principles of the Code with reference to ownership, transfer, rights, registration, etc., we agree with Benito (obra cit.) and it so happens in practice that they are not applicable to small craft which are only subject to administrative (customs) regulations in the matter of port service and in the fishing industry."

"We may add that the word 'nave' in Spanish, which is used interchangeably with 'buque' in the Code of Commerce, means, according to the Spanish-English Dictionary compiled by Edward R. Bensley and published at Paris in the year 1896, "Ship, a vessel with decks and sails." Particularly significant in this definition is the use of the word "decks", since a deck is not a feature of the smallest types of water craft.

"In this connection a most instructure case from a Federal Court in the United States is that of "*The Marive*" (5 Fed., 813), wherein it was held that only vessels engaged in what is ordinarily known as martime commerce are within the provisions of law conferring limited liability on the owner in case of maritime disaster. In the course of the opinion in that case the author cites the analogous provisions in the laws of foreign maritime nations, especially the provisions of the Commercial Code of France; and it is observed that the word 'vessel' in these code is limited to ships and other sea-going vessels. Its provisions are not applicable', said the court, 'to vessels in inland navigation, which are especially designated by the name of boats.' Quoting from the French author Defour (Dreit Mer., 121), the writer of the opinion in the case cited further says: 'Thus, as a general rule, it appears to me clearly, both by the letter and spirit of the law, that the provisions of the Second Book of the Commercial Code (French) relate exclusively to maritime and not to fluvial navigation; and that consequently the word 'ship', when it is found in these provisions, ought to be understood in the sense of a vessel serving the purpose of maritime navigation or sea-going vessel, and not in the sense of a vessel devoted to the navigation of rivers."

Before its sinking the "Tristan" was used in the Manila Bay for carrying back and forth the members of the crew who were off duty. It cannot be, therefore, considered as included in the denomination of vessel as specified in article 835 of the Code of Commerce, and that being the case protest was not a condition precedent for the recovery of

the damages sustained by the owner of the sunken motor launch.

When defendant asked for the dismissal of the case in the court below he reserved his right to submit evidence in defense, should the motion therefor be eventually denied. The opposing party failed to object thereto; thus, in furtherance of justice, this case should be remanded, to the court below. We do not believe this to be in violation of the ruling in Arroyo *vs.* Azur (43 Off. Gaz., 54).

The judgment rendered by the court below is, therefore, set aside and the case should be returned as it is hereby ordered returned, to the court of origin for the reception of the defense evidence, should defendant choose to offer it, or if he fails to do so, decision on the merit is to be rendered. So ordered.

Endencia and *Rodas, JJ.*, concur.

Judgment set aside; case returned to the court of origin with instruction.

[No. 9948–R. November 12, 1953]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* TEODORO ESTANDANTE, FRANCISCO VIOLA, FELIPE CARIASO and SANTIAGO FAJARDO, defendants. TEODORO ESTANDANTE, FELIPE CARIASO and SANTIAGO FAJARDO, defendants and appellants.

CRIMINAL LAW; MALVERSATION THROUGH FALSIFICATION OF PUBLIC DOCUMENT; BOND, NOT A NECESSARY ELEMENT; CASE AT BAR.—A bond is not necessary to make one civilly and criminally accountable and liable for government property in his custody. It is enough that he had accepted the responsibility entailed by his position and performed his duties as such custodian.

APPEAL from a judgment of the Court of First Instance of Batanes. Ladaw, *J.*

The facts are stated in the opinion of the court.

Agudo, Singson & Reyes for defendants and appellants.

Assistant Solicitor General Francisco Carreon and *Solicitor Ramon L. Avanceña* for appellee.

PEÑA, *J.:*

The Philippine Relief and Trade Rehabilitation Administration, otherwise known as the PRATRA and now the PRISCO, has a branch in Basco, Batanes. One of its bodegas designated as bodega No. 2, was located under the residence of one Mrs. Rosario de Padua. The municipality of Basco was lashed by incessant typhoon and rain for nine consecutive days, that is, from August 4 to 9, 1950. As a consequence, the goods stored in bodega No. 2 were damaged, and the then acting property clerk,

Francisco Viola, accordingly informed the PRATRA branch manager of the matter. On receiving such information, manager Bernardo Bersana, accompanied by accountant Felipe Cariaso and Francisco Viola proceeded to see the condition of the bodega. Thereafter, and upon consultation with Felipe Cariaso, Bereana on August 14, 1950, addressed a letter to the provincial auditor and another one to the district health officer of Batanes respectively requesting them to determine the actual condition and the fitness for sale of the merchandise stored under the residence of Mrs. Rosario de Padua (Exhibits 4 and 5). Thus, Santiago Fajardo, property Inspector of the auditor's office made a general examination of the goods, and Francisco Viola together with Felipe Cariaso, upon instruction of their superior, segregated the damaged merchandise from the good ones, listing the same on the proper form for final inspection by the auditor. On August 16, 1950, *Felipe Cariaso prepared on a typewriter the following* "report of damaged merchandise" (Exhibit C) duly certified to and signed by him and Francisco Viola:

Quantity	Unit	Name of Article	Unit cost	Total cost
627	Pkgs.	Hi-Ho Crackers	.63	395.01
135	Kilos	Garbanzos	1.3	175.50
216	Pkgs.	Table Salt (Morton)	.3	66.96
15	Ea.	Washington Biscuits	3.20	48.00
44	Ea.	Mor Beef	90	48.40
1	Ea.	Canova Coffee	.58	.90
40	Pkgs.	Purico Lard	.642	23.20
119	Pkgs.	White Band	.642	76.40
862	Ea.	Dolores Sardines	.651	39 8.41
72	Ea.	Salmon Tea Rose	.833	59.98
13	Bags	Salt	1.52	19.76
45	Kilos	Refined Sugar	.40	18.00
	Total			1,330.52

This report was on the same date indorsed to the provincial auditor for action. The next day, or on August 17, 1950, Santiago Fajardo repaired to PRATRA bodega No. 2 to examine and condemn the goods segragated by the personnel of the PRATRA. After examining the merchandise, Fajardo signed the certificate of inspection and, for and in the absence of the provincial auditor, he returned the report (Exhibit C) by way of second indorsement to the PRATRA provincial branch manager, approving the action of property inspector as contained in his certificate. Santiago Fajardo then instructed Francisco Viola to bring the goods out of the bodega to be thrown away. Similarly, Jose Honomin, a representative of the district health officer, verified the condition of the merchandise shown to him consisting of 4 boxes of Hi-Ho Crackers, 20 packages of White Band Lard, 2 cans of Washington Biscuit and 2 sacks garbanzos. As they were found unfit for human

consumption, the same were carted away to the outshirts of the town where Paulino Basco burnt them.

However, according to Francisco Viola of the 135 kilos of *garbanzos* supposedly damaged, 2 sacks were not shown to the sanitary inspector but the same were divided between Felipe Cariaso and Santiago Fajardo. Similarly, 216 packages of Morton salt was taken by them instead of having been thrown away as certified to in the report. While 3 cans of Washington biscuits were declared unfit for human consumption by the sanitary inspector, the rest of the 15 cans listed under column "1" of Exhibit C were appropriated for the benefit of Cariaso and Fajardo, giving 1 can to Viola. Of the lard, Cariaso took 40 packages of the Purico brand, while his co-accused took advantage of the several packages of the White Band" not condemned by the sanitary inspector who declared only 20 packages of the latter brand as unfit for human consumption. And according to Francisco Viola, the 862 cans of Dolores sardines purportedly damaged, were to cover the shortage of this item which Cariaso took from time to time. Cariaso used to get keys of the bodegas from Viola, entering therein very often. As according to Viola, Cariaso had an outstanding account in favor of the PRATRA consisting of 48 cans of Salmon Tea Rose, the latter prepared the report (Exhibit C) in such a way that he made it appear therein that 72 cans of this item were damaged, although the same were never shown to the Sanitary inspector to determine their fitness for consumption in order that his indebtedness would be covered thereby. Viola further declared that 45 kilos of usable refined sugar was sent to Fajardo's house by Cariaso through Jose Balenton, janitor of the PRATRA branch.

Consequently, on October 18, 1950, an information for the complex crime of malversation through falsification of public documents was filed in the Justice of the Peace Court of Basco, Batanes. However, on November 20, an amended information for the same complex crime was filed, adding to the original three accused one Teodoro Estandante, on the ground that he was the real property clerk, and not Francisco Viola who was discharged from the information and made witness for the state. After due hearing, the trial court found the three remaining defendants, Teodoro Estandante, Felipe Cariaso and Santiago Fajardo, guilty as charged, and sentenced each of them to an indeterminate inprisonment of 6 years of *prisión correccional* to 12 years of *prisión mayor*, to pay a fine of ₱5,000, to indemnity jointly and severally the Price Stabilization Corporation or PRISCO in the sum of ₱987.20, without subsidiary imprisonment, and to pay their proportionate share of the costs. From this judgment, Teodoro Estandante, Felipe Cariaso and Santiago Fajardo appealed.

As of *July, 1949,* appellant Teodoro Estandante ceased performing the duties of a property clerk, although his bond for such position was not cancelled. Estandante was substituted by one Francisco Viola, to whom the former delivered the keys of the bodegas in the presence of the provincial branch manager, upon authority of the Manila office of the PRATRA. In the meantime, branch manager Bernardo Bersana submitted the necessary bond for Francisco Viola on being asked to do so by the Manila office. Francisco Viola, who had been performing the duties of a property clerk, was conscious of his responsibility for the contents of the bodegas, the keys of which he had in his possession.

In the light of the foregoing facts, it could not have been Teodoro Estandante who "slept on his duties as property clerk and through abandonment or negligence' permitted the malversation of public property under his custody as bonded official in or about and during the month of August, 1950" when he, along with his co-accused, was charged with the crime of malversation through falsification of public documents. He was relieved of his duties as property clerk by his superior as far back as July, 1949, and on the same date the keys of the bodegas were delivered to Francisco Viola, whose confidence Bernardo Bersana apparently enjoyed. What diligence should we expect from Teodoro Estandante, who did not even have the discretion of closing and opening the bodegas in the month of August, 1950, for the safekeeping of the merchandise in question? It is indeed unjust to hold Teodoro Estandante criminally responsible for the contents of the bodegas after he had been relieved of his duties therefor and stripped of the means by which he could have safely kept the same by no less than the PRATRA branch manager. Nobody, but the acting property clerk on accepting the responsibility entailed thereby, should be expected to exercise utmost diligence to prevent the larceny, embezzlement or misappropriation of the merchandise entrusted to him. The singular fact that the bond put up by Teodoro Estandante was left uncancelled when he was relieved by Francisco Viola could not make his criminally liable for the looting of the goods over which he had on control or knowledge that such were spirited away. It was Francisco Viola, whose knowledge of the embezzlement qualified him as a state witness and earned his discharge from the information, who was in custody of the goods that were misappropriated. Moreover, a bond answers for civil, and not penal, liability of the person who posts the same.

A further review of the record of this case fails to disclose that Teodoro Estandante intervened or participated in the preparation of the "report of damaged merchandise" (Exhibit C) which was prepared on August 16, 1950, on

the typewriter by Felipe Cariaso and certified correct by him as to columns (4) and (5) and by Francisco Viola to the other columns, that is, (1) (2) and (3). And as property inspector of the office of the provincial auditor Santiago Fajardo signed this report, certifying that the items enumerated under columns (1) to (12) were thrown. Therefore, whatever untruthfulness may have been camouflaged by said certifications, cannot be attributed to, or affect Teodoro Estandante.

The next inquiry is whether or not Felipe Cariaso and Santiago Fajardo are guilty of malversation of public property. In the case of U. S. *vs.* Ponte, 20 Phil., 379, it was held that those who take a direct participation in the commission of the crime of malversation of public funds by public officials and those who cooperate in the commission of the same are guilty as principals although they themselves may not be public officials. The same ruling was reiterated in the case of U. S. *vs.* Dato, 37 Phil., 359. In the instant case, Francisco Viola who was designated as property clerk by the PRATRA branch manager was the one responsible for the safekeeping of the merchandise stored in the bodegas of this entity. True that he was not actually bonded for this position, as his bond was sent to the Manila office of the PRATRA for approval, at the time of the commission of the crime at bar, but a bond is not necessary to make one civilly and criminally accountable and liable for government property in his custody. It is enough that he had accepted the responsibility entailed by his position and performed his duties as such custodian.

In the light of the exposition of what transpired in the PRATRA branch at Basco, Batanes, there is no doubt that Francisco Viola, at least through negligence, permitted Felipe Cariaso and Santiago Fajardo to take the aforementioned goods and cooperated with them in the manipulation of the report (Exhibit C), making it appear that the merchandise listed therein were damaged. He did not even raise a voice of protest every time Cariaso took the keys from him and entered the bodegas, saying that he was afraid of the latter. Similarly, he did not even raise any objection when the report (Exhibit C) was presented to him for signature by Santiago Fajardo, in spite of the fact that he knew pretty well that what he certified to be correct was not totally true. From these acts of Francisco Viola, it is obvious that he was the very one who slept on his duties as property clerk and through abandonment or negligence permitted Felipe Cariaso and Santiago Fajardo to malverse public property under his custody. And the fact that he was luckily discharged from the information does not obliterate the crime of malversation. Consequently, Felipe Cariaso and San-

tiago Fajardo could not escape the consequence of their misdeeds.

As to the falsification of the "report of damaged merchandise", we are satisfied by the evidence on record that Felipe Cariaso and Santiago Fajardo are responsible therefor. They knew pretty well that the quantity certified to by them as correct was false. Several items certified to be existing in the bodegas and damaged had been spirited away prior to the actual condemnation and were still fit for human consumption and for sale.

In view of the foregoing, Felipe Cariaso and Santiago Fajardo are guilty of the complex crime of malversation through falsification of public documents.

Wherefore, with the modification that Teodoro Estandante is acquitted of the charge against him with cost *de oficio* with respect to him, the judgment appealed from is hereby affirmed, with ¾ of the costs against Felipe Cariaso and Santiago Fajardo.

It is so ordered.

Felix and *Gutierrez David, JJ.*, concur.

Judgment modified.

[No. 9238-R. December 19, 1953]

LUZ LABUGA CÉLIX, as Special Administratrix of the Estate of Bonifacio Célix, plaintiff and appellee, *vs.* EUFEMIA CUARESMA VDA. DE JUMAWAN, as administratrix of the Estate of Sergio Jumawan, defendant and appellant.

SALE A RETRO; REDEMPTION; RUNNING OF PERIOD OF REDEMPTION PRESUPPOSES FULL PAYMENT OF PURCHASE PRICE.—The running of the period of repurchase in a sale *a retro* presupposes the payment in full of the price agreed upon for the transaction. Since, in the case at bar, the vendee had not completely satisfied to the vendor the purchase price of the properties bought, it is inconceivable that the period for the repurchase of the property could mature upon the lapse of the agreed redemption period and much less that the purchaser could lease the property bought and collect rents from the vendor for its occupation thereof, when the former has not complied with his obligation to the latter of paying in full the consideration of the sale.

APPEAL from a judgment of the Court of First Instance of Dipolog. Ceniza, *J.*

The facts are stated in the opinion of the court.

Felixberto M. Serrano and *Teofilo Buslon* for defendant and appellant.

Del Rosario, Abadiez, Abinales & Sarmiento for plaintiff and appellee.

FELIX, *J.:*

Bonifacio Célix, now deceased, had during his life considerable land holdings in Dipolog, Zamboanga, consisting, among others, of lots Nos. 4667, 4688, 4690, 4699, 4698, 4697, 4666, 5506 and 6404 of the cadastral survey of said municipality (Exhibit F). In 1939 he had to settle some accounts with the Philippine National Bank and with Mr. Tobongbanan which were to fall due, and to secure the money with which to meet these obligations he went to Sergio G. Jumawan in Larena, Siquijor, Negros Oriental, and entered with him into a transaction by virtue of which he executed two documents on March 12, 1931, which appear on record as Exhibits A and B. Exhibit A is a deed of sale with right of repurchase of 3 parcels of land known as lots Nos. 4666, 5506 and 4684 of the Cadastre of Dipolog, with all the improvements thereon, of an aggregate area of 1,017,646 square meters and covered by Original Certificates of Title Nos. 14000, 14001 and 14004 of the Register of Deeds of Zamboanga, respectively. The consideration or price of the sale was the sum of ₱22,000, Philippine currency, which the vendor, the said Bonifacio Célix, acknowledged to have received in full from Sergio Jumawan. In said instrument of sale it was expressly stipulated that if the vendor, his heirs or successors in interest should fail to redeem the property within the period of four years, the vendee or his heirs or successors in interest would become the exclusive owners of the aforementioned lots and improvements upon making a previous additional payment to the vendor *a retro,* or to his heirs or successors in interest, in the sum of ₱3,000, Philippine currency, and that then said deed Exhibit A would be considered final and consummated, clothing the purchaser with all the prerogatives inherent by law to an instrument of sale.

Exhibit B, also dated March 12, 1939, is the contract executed by Sergio Jumawan and Bonifacio Célix wherein the former leased to the latter the same three lots at the annual rent of ₱1,000 or ₱4,000 for the whole period, which the lessor acknowledged to have received in advance at the time of the execution of the instrument.

On March 18, 1943, that is, six days after the expiration of both the period of redemption and lease, Bonifacio Célix died without repurchasing said lots, and it was sometime in that year that one Francisco Paner, who claimed to be the "encargado" of said deceased, took possession of the three lots above indicated and without much ado and without the knowledge or consent of the heirs of Bonifacio Célix and through the inexplicable mediation of Fiscal Leoncio Hanoy, turned over on June 8, 1943, the possession of the same to Eufemia Cuaresma,

widow of Sergio Jumawan who had been killed by the Japanese (Exhibit H). It is to be noted in this connection that the original titles of these lots are still in the name of the deceased Bonifacio Célix and that no document has been executed by Bonifacio Célix or his heirs concerning the payment of the additional sum of ₱3,000 stipulated by the vendor and vendee as a prerequisite for the perfection or finality of the sale provided in Exhibit A.

In special proceedings No. 56 of the Court of First Instance of Zamboanga Luz Labuga Célix, daughter of Bonifacio Célix, was appointed special administratrix of her father's estate, and in such capacity she instituted the present action against Eufemia Cuaresma Vda. de Jumawan who had also been appointed administratrix of the estate of her deceased husband Sergio Jumawan in special proceedings instituted in the Court of First Instance of Negros Oriental. In her complaint, filed on December 18, 1947, plaintiff claims that Exhibit A was not a deed of sale *a retro* but as equitable mortgage; that the amount recited as consideration of the sale had not been fully paid; that the sum of ₱3,000 prescribed as additional payment for the finality of the sale had not been satisfied; that the amount of ₱4,000 said to have been paid in advance as rents for the whole period of four years was not really delivered and was only a means or strategem resorted to for covering the interests on the loan; and that the defendant in her aforementioned capacity has unlawfully seized possession of said lots, and prays the Court to render judgment:

(*a*) Declaring the administration of the estate of the deceased Bonifacio Celix owner of the properties in question;

(*b*) Sentencing the defendant as administratrix of the estate of the deceased Sergio Jumawan to vacate the premises hereof to the plaintiff as administratrix of the estate of the deceased Bonifacio Celix;

(*c*) Declaring that the contract quoted in paragraph III of the First Cause of Action is not a true contract of sale with *pacto de retro* but of a loan with acquitable mortgage of the property described therein to secure its payment;

(*d*) Declaring that the aggregate amount received by the deceased at different times by virtue of said contract is P16,160,93 and not the amount of P22,000.00 appearing in the contract;

(*e*) Adjudging that the administration of the estate of the deceased Bonifacio Celix should restore to the administration of the estate of the deceased Sergio Jumawan the above-mentioned amount of P16,160,93;

(*f*) Sentencing the defendant to pay to the administration of the estate of the deceased Bonifacio Celix the sum of P60,000 as damages, plus P20,000 annualy in the same concept during the pendency of this case, and cost of this suit;

(*g*) In the event that the above-quoted document of sale with *pacto de retro* has been registered in the office of the Register of

Deeds of the Province of Zamboanga with the corresponding annotation in the original certificates of title of the above-described properties, ordering the Register of Deeds of said province to cancel said registration with its annotation therein; and

(*h*) Granting further unto plaintiff such other relief as may be deemed just and equitable.

The defendant in her said capacity timely answered the complaint which was amended on July 19, 1950, setting affirmative defenses and counterclaim and alleging in turn, among other things, that contract Exhibit A was a real, true and perfect contract of sale with right of repurchase and not a mortgage to secure a loan, as alleged by the plaintiff; that at the time of the sale the vendee not only made full payment of the price of the lots but also took possession of all the muniments of title thereto and later took possession of the properties as the vendor, his heirs and successors did not repurchase nor offer to repurchase or tender the repurchase price within the stipulated period, and thus ownership thereof was consolidated in defendant; that the additional payment of ₱3,000 was also overpaid by applying certain advance remittances in the total amount of ₱6,158.53 to the deceased Bonifacio Célix pursuant to a verbal understanding on the matter; and that out of that amount and deducting said ₱3,000 there is still a balance of ₱3,158.53 that plaintiff is bound to return to the defendant. On these averments defendant prays the court to render judgment:

1. Ordering that the plaintiff get nothing from her complaint;

2. Declaring that the defendant is now the true and absolute owner of the properties in question;

3. Declaring that the plaintiff as administratrix of the estate of Bonifacio Célix is obligated to the defendant in the sum of ₱3,158.53 and ordering said plaintiff to pay said amount to the defendant; and

4. Condemning plaintiff to the payment of the costs of these proceedings.

Plaintiff then moved for a bill of particulars in order to be in position to file an intelligent and responsive reply to the amended answer and counterclaim, and after it was submitted by the defendant, plaintiff filed her reply and answer to the counterclaim praying the court to order the dismissal of the counterclaim. Once the issues were joined and hearing held, the Court on February 28, 1951, rendered decision, the last part of which is as follows:

"Premises considered, judgment is hereby rendered declaring that the alleged *pacto de retro* sale transcribed in paragraph 2 of the complaint and admitted by the defendant is only an equitable mortgage to secure a loan of ₱22,000 which includes the advance rental of ₱4,000 paid by the deceased Bonifacio Célix and that of this amount, only ₱16,384.93 was taken by said Bonifacio Célix and adding the rental in the amount of ₱4,000, Bonifacio Célix total loan from the late Sergio Jumawan was only ₱20,384.93.

Consequently, the defendant, as administratrix of the estate of the late Sergio Jumawan, is hereby ordered to turn over to the plaintiff herein the four parcels of land in question and to pay to the plaintiff damages in the amount of ₱39,750, and to pay each year further damages in the amount of ₱7,550 until the land in question shall have been turned over to the plaintiff.

In view, however, that the defendant has to return the loan in the amount of ₱20,384.93, this amount should be deducted from the damages she has to pay to the plaintiff of ₱39,750, so that she is only to pay to the plaintiff damages in the amount of ₱19,365.07 and to pay the costs of the proceedings.

Defendant then filed a motion for reconsideration and new trial on the grounds of newly discovered evidence and that the said decision was against the law and the evidence, which motion was denied by the court: hence this appeal wherein counsel for defendant submits that the lower court erred:

1. In holding that the real intention of the parties in executing the deed of sale with right to repurchase, Exhibit A, was to secure the payment of a loan obtained by the vendor, Bonifacio Célix, from the vendee, Sergio Jumawan;

2. In finding and holding that the price stipulated in the document, venta con pacto de retro, Exhibit A, had not been paid in full;

3. In holding that the "taking possession of the land in question by the defendant * * * is against the law * * *";

4. In the alternative and assuming that the trial court did not err in declaring the document, Exhibit A, as an equitable mortgage, in not having held further that the same Exhibit A contained a second contract providing for the sale of the properties specified therein, the price being the amount of the loan taken plus an additional ₱3,000; and

5. In ordering the defendant-appellant to reconvey the properties in question to the plaintiff-appellee and in holding her liable for damages.

The main question at issue in this appeal refers to the nature of the contracts Exhibits A and B and the determination of the real intention of the parties in executing the same. We agree with appellant that when the terms of a given contract are clear, it must be interpreted according to its literal sense and held to be what such literal meaning purports to be (Alojado *vs.* Lim, 51 Phil., 339); but

"The court will not construe an instrument to be one of sale with *pacto de retro*, with stringent and onerous affects that follow *unless the terms of the instrument and all the circumstances positively require it.* Whenever under the terms of the writing, *any other construction can fairly and reasonably be made, such construction will be adopted.* Sales with right to repurchase as defined by the Civil Code, are not favored and the contract will be construed as a mere loan *unless the court can see that, if enforced according to its terms, it is not an unconscionable one.*" (Aquino *vs.* Deala, 63 Phil., 582).

And this is more so when the instrument which embodies a sale with *pacto de retro* as a mere mortgage to

secure a loan is ambiguous or obscure, or when execution or performance of same woud be absolutely incompatible with the nature of a sale with pacto de retro (Olino *vs.* Medina, 13 Phil., 378).

"While it is a general rule that parole evidence is not admissible to vary the terms of a contract, yet when the issue that the contract does not express the intention of the parties is clearly presented, the courts will, when a proper foundation is laid therefor, hear evidence for the purpose of ascertaining the intention. In every case where the court has considered a contract to be a mortgage or loan instead of a sale with *pacto de retro*, it has done so either because the terms of the contract were ambiguous or because the circumstances surrounding the execution or the performance of the contract were incompatible or inconsistent with the theory that the contract was one of *pacto de retro*." (Tolentino *vs.* Gonzales Sy Chiam, cited in Fiel *vs.* Segismundo et al., 46 Off. Gaz., No. 10, p. 4995).

In the case at bar, plaintiff squarely raised in the complaint that the true intention of the parties to the instruments marked as Exhibits A and B was not the sale *a retro* of the lands described therein, but merely the obtention of a loan, payment of which was secured with the lots described in both deeds. It may be true that the terms of the sale and lease contracts (Exhibits A and B) are very clear, but judging from the judicial standards and the principles of law aforequoted, we have just the same to pass upon the question raised because we find from the record that certain averments made in both deeds, which may be incompatible with or change the nature of the contracts they purport to be, are admittedly untrue, as for example, that the amount of ₱22,000, the consideration for the sale, which the vendor declares to have been entirely received by him, was not really paid in full, and that the sum of ₱4,000 to cover the yearly rent of ₱1,000 for the lease of the same lots sold was not paid at all by the lessee and much less in advance as the lessor acknowledged to have received in Exhibit B. In her testimony at the hearing defendant herself admitted that her husband "did not *yet* pay to Bonifacio Célix the full amount of ₱22,000" (t. s. n. p. 79), which was the purchase price of the 3 lots involved in this litigation, and inasmuch as they (S. Jumawan and wife) did not have money at that time (t. s. n. p. 63), the vendee S. Jumawan agreed to pay the then pending obligations of the vendor Bonifacio Célix as they became due, and such payments were to be considered as installments on the purchase price (appellant's brief, p. 6).

As stated by the trial judge, with whom we concur, "the true accounting made between Bonifacio Célix and Sergio Jumawan, as reflected in Exhibits C and D, where it is undisputed that the portions written in ink in those exhibits were made by the late Sergio Jumawan and those

in pencil, in the hand-writing of the late Bonifacio Célix in 1941, done in the ordinary course of business before their death and, are not, therefore, self-serving because Bonifacio Célix at that time was not contemplating any litigation between him and Sergio", is as follows:

"Balance April 1941

CHEQUE	₱5,000.00
CASH	500.00
Cash vale	75.00
M. T. S. Trak September 15, 1939	110.00
M. T. S. Trak October 17, 1939	120.00
M. T. S. Trak January 23, 1940	270.00
C. Banua November, 1939	8,000.00
CASH BY MONEY ORDER	700.00
Pacto de retro Sale-Abakhan	(1,500.00)
Cash (vale)	30.00
	₱16,190.93
Bayad Manila Trading (Translated Payment of Manila Trading)	₱120.00
Nadawat ko sa Larena (Translated received by me at Larena)	16.00
CAS. GIRO POSTAL FELE. 2	700.00
BAYAD MANILA TRADING (Translated payment of Manila Trading)	203.00
CASH GIRO POSTAL, JUNIO 17, 1940	500.00
Pagadto as Larena ko (Translated when I went to Larena)	5.00
Giro Telegrafico February 27, 1941	150.00
GRAND TOTAL	₱17,884.93
Genas sa Pacto de Retro sa Abakhan	1,500.00
	₱16,384.93

"This Exhibit D"—the trial judge continues—"shows that the total amount that the late Bonifacio Célix got from the late Sergio Jumawan was ₱16,384.93 and that the money he was supposed to get from Sergio Jumawan without including the ₱4,000 rentals which was added up in the *pacto de retro* sale to make it ₱22,000 was ₱18,000, showing, therefore, that the total amount was not fully taken by him at the time of his death."

Such being the case, it is hard to conceive how the period for the *repurchase* of the property could mature upon the lapse of four years from the date of the execution of the instrument of sale (Exhibit A), when the vendee had not completely satisfied to the vendor the purchase price of the properties bought. Besides, how can a purchaser lease the property bought and collect rents from the vendor for its occupation thereof, when the former has not complied with his obligation to the latter of paying in full the consideration of the sale? The running of the period of repurchase in a sale *a retro* presupposes the payment in full

of the price agreed upon for the transaction, which is not so in the case at bar, even if we disregard the fact that appellant seized possession of the lots in litigation without paying to the estate of the late Bonifacio Célix the *additional* sum of ₱3,000 prescribed in Exhibit A in order that the sale in question be considered final and consummated. The transaction really entered into by the deceased Célix and Jumawan is incompatible with the terms of Exhibits A and B and with the nature of a sale with *pacto de retro* and lease of the property said to be sold, and considering the circumstances surrounding the execution of said instruments, we are inclined to uphold the contention of plaintiff-appellee to the effect that the transaction entered into by the deceased Bonifacio Célix and Sergio Jumawan was merely a loan secured by the lots aforementioned. Consequently, appellant's seizure of said property under the circumstances appearing of record was entirely unjustified and without any legal authority.

As regards the damages, the decision appealed from says the following:

"The Court believes and considers that the taking possession of the lands in question by the defendant in 1943, without the consent of the legal representative of the late Bonifacio Célix, is against the law for which she is answerable for damages in her capacity as administratrix of the estate of the late Sergio Jumawan.

Computing the damages suffered by the plaintiff incident to her deprivation of the possession and enjoyment of the lands in question by the defendant, the Court believes and so holds that the damages suffered by her amount to ₱39,750 itemized as follows. The produce of the lands in question in terms of coconuts is 45,000 nuts every quarter since the year 1946. Since 1946 until the end of 1950, inclusive, there are 20 quarters, during that entire period there had been gathered 900,000 nuts. At the rate of 265 kilos for every thousand nuts, as per agreement of the parties, there had been produced 238,500 kilos of copra and at an average of ₱0.25 per kilo, as per agreement of the parties, sinced 1946, the total value of the copra harvested from the coconut trees in the lands in question was ₱59,625; since the custom of the place is that ⅔ of this amount should correspond to the owner and ⅓ to the tenant, ⅔ of ₱59,625 should correspond to the plaintiff herein, which is equivalent to ₱39,750.

We share in the opinion of the trial judge that by reason of the unlawful seizure of the lands in question by the defendant the latter is answerable for damages in her said capacity as administratrix of the estate of the late Sergio Jumawan. We also find the above computation correct and in accordance with the evidence appearing on record. However, the trial judge failed to consider an important item, i.e., that from the ⅔ of the income corresponding to the owner of the lands something has to be allotted to the person who devoted her time and endeavors to the administration of the estate and to the supervision of the work of the tenants therein, aside

from the interest that the capital of ₱16,384.93 should draw from the period the respective sums composing that amount have been delivered to Bonifacio Célix up to 1943, when the lots in question were seized from the heirs of the latter, which we estimate and fix at ⅓ of the income of ₱59,625 or ₱19,875.

On the other hand, we are of the opinion that the amount of the loan that should be paid by the plaintiff to the defendant shall not include the alleged rent of ₱4,000 for the four years of lease, and thus the operation to be done is the following: ⅓ of the income of ₱59,625, or ₱19,875, will correspond to the plaintiff, and another equal sum to the defendant, and inasmuch as the plaintiff has to return to the defendant the amount of ₱16,384.93 that the late Bonifacio Célix received on account of the loan, the defendant still has to pay to the plaintiff the sum of ₱3,490.07 as damages. We think that this result is more in consonance with justice and equity.

Wherefore, and with the modifications just indicated, the decision appealed from is hereby affirmed, with costs against appellant.

It is so ordered.

Gutierrez David and *Peña, JJ.*, concur.

Judgment modified.

[No. 11939-R. January 20, 1954]

ANSELMO QUILANETA, petitioner, *vs.* THE HONORABLE SEGUNDO C. MOSCOSO, Judge of the Court of First Instance of Leyte and the Provincial Fiscal of Leyte, respondents.

1. MANDAMUS; CAN NOT BE USED TO CONTROL JUDGE'S DISCRETION.—Mandamus will only lie where the court, officer, board or person concerned unlawfully neglected the performances of an act which the law specifically enjoins as a duty resulting from office, trust, or station, or when such court, officer, board or person has unlawfully excluded a person from the use and enjoyment of a right or office to which he is entitled (Olsen and Co. *vs.* Herstein et al., 32 Phil., 520; Mendoza *vs.* McCullough and Co., 29 Phil., 465). The writ is only available to compel an officer to perform a ministerial duty (Inchausti and Co. *vs.* Wright, 47 Phil., 866). Hence, it cannot be used to control the discretion of a judge, or to compel him to decide a case or a motion pending before him in a particular way (Dy Cay *vs.* Crossfield, 38 Phil., 521; Montalbo *vs.* Santamaria, 54 Phil., 955).
2. PROHIBITION; REMEDY INTENDED TO PREVENT OPPRESSIVE EXERCISE OF LEGAL AUTHORITY; TEST OF ABUSE OF DISCRETION.—The remedy of prohibition is intended to prevent the oppressive exercise of legal authority (Dimayuga *vs.* Fernandez, 43 Phil., 304; Tong & Coo Teng Hee *vs.* Santamaria, 54 Phil., 371). Its only basis is lack or excess of jurisdiction or authority on the part of an inferior tribunal, corporation, board of

person, as gross abuse of discretion (So Chu *vs.* Nepomuceno, 29 Phil., 208; Tayco *vs.* Capistrano, 53 Phil., 866), and there is abuse of discretion only where the exercise of judgment is so capricious and whimsical as to be equivalent to lack of jurisdiction (Abad Santos *vs.* Province of Tarlac, 67 Phil., 489; Bibby de Padilla *vs.* Herrileno, 60 Phil., 511).

3. MANDAMUS OF PROHIBITION; ACTION OF JUDGE OR FISCAL, NOT CONTROLLABLE BY MANDAMUS OF PROHIBITION.—A judge has discretion to decide a case in accordance with his best judgment; a Fiscal, to prosecute offense committed within his jurisdiction. These duties are imposed by law on both officials, and the performance thereof involves exercise of judgment. Their actions on such matters, therefore, cannot be controlled either by mandamus or by prohibition.

ORIGINAL action in the Court of Appeals. Mandamus and Prohibition with a petition for a writ of preliminary injunction.

The facts are stated in the opinion of the court.

Alberto Aguja and *Marcelino R. Veloso* for petitioner.
Castrense C. Veloso for respondents.

NATIVIDAD, *J.:*

This action has been instituted by the petitioner to secure a judgment from this Court ordering the respondent Judge to dismiss a certain criminal case filed against him in the Court of First Instance of Leyte, and the respondent Fiscal to desist from prosecuting the same.

It appears that on December 6, 1948, the respondent Provincial Fiscal filed in the Court of First Instance of Leyte an information charging the petitioner, Anselmo Quilaneta, with the crime of infidelity in the custody of public document. The information reads:

"That on or about the 24th day of November, 1951, in the municipality of Capoocan, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the Municipal Treasurer of Capoocan, Leyte, and having in his custody and control official ballots and other important election forms for the use in general election on November 13, 1951, with deliberate intent, did, then and there, willfully, unlawfully and feloniously remove and conceal pad containing 100 sheets of official ballots, thereby permitting the possibility that the said official ballots might be fraudulently used to the damage and prejudice of the public interest and in violation of article 226 of the Revised Penal Code.

"Contrary to Law."

The case was docketed as Criminal Case No. 4687 of the Court of First Instance of Leyte, and when it was called for trial, the petitioner filed a motion to quash the action, on the ground that the information does not allege facts constitutive of an offense. After due hearing, the Court, then presided by the respondent Judge, Honorable Segundo C. Moscoso, in an order dated August 4, 1953,

denied the motion and set the case for hearing on the 12th day of that month. A motion for a reconsideration of this order was likewise denied.

The petitioner now alleges that the respondent Judge, in not dismissing the criminal action above-referred to and in setting it for trial "gravely abused his discretion and unlawfully neglected the performance of an act which is specifically enjoined" by law, and that the respondent Provincial Fiscal, in proceeding with the prosecution of the case and "in not moving to dismiss the same", also "gravely abused his discretion", and that there is no other plain, speedy and adequate remedy in the ordinary course of law for the correction of such acts.

We are of the opinion that this action cannot prosper. Whether it be considered as an action for mandamus or one for prohibition, it is clear that the remedy applied for cannot issue. Mandamus will only lie where the court, officer, board or person concerned unlawfully neglected the performance of an act which the law specifically enjoins as a duty resulting from office, trust, or station, or when such court, officer, board, or person has unlawfully excluded a person from the use and enjoyment of a right or office to which he is entitled (Olsen and Co. *vs.* Herstein, 32 Phil., 520; Mendoza *vs.* McCullough and Co., 29 Phil., 465). The writ is only available to compel an officer to perform a ministerial duty (Inchausti and Co. *vs.* Wright, 47 Phil., 866). Hence, it cannot be used to control the discretion of a judge, or to compel him to decide a case or a motion pending before him in a particular way (Dy Cay *vs.* Crossfield, 38 Phil., 521; Montalbo *vs.* Santamaria, 45 Phil., 955). On the other hand, the remedy of prohibition is intended to prevent the oppressive exercise of legal authority (Dimayuga *vs.* Fernandez, 43 Phil., 304; Teng and Coo Teng Hee *vs.* Santamaria, 54 Phil., 371). Its only basis is lack or excess of jurisdiction or authority on the part of an inferior tribunal, corporation, board or person, or grave abuse of discretion (So Chu *vs.* Nepomuceno, 29 Phil., 208; Tayco *vs.* Capistrano, 53 Phil., 866), and there is abuse of discretion only where the exercise of judgment is so capricious and whimsical as to be equivalent to lack of jurisdiction (Abad Santos *vs.* Province of Tarlac, 67 Phil., 480; Bibby de Padilla *vs.* Horrilleno, 60 Phil., 511).

It is conceded in the instant case that the respondent Judge and the respondent Fiscal both have jurisdiction to perform the acts complained of. Petitioner's only contention is that both gravely abused their discretion. It is clear, however, that this contention is unfounded. There is absolutely no showing that the acts complained of were the result of a capricious and whimsical exercise

of judgment. The order of the respondent Judge and the decision of the respondent Provincial Fiscal complained of might be erroneous. This is a question which we do not now decide. But certainly it cannot be claimed that they were arbitrary or fanciful. Both officers are clothed with discretion in the matter. The respondent Judge had discretion to decide the case in accordance with his best judgment; the respondent Provincial Fiscal, to prosecute offenses committed within his jurisdiction. These duties are imposed by law on both officials, and the performance thereof involves exercise of judgment. Their actions on such matters, therefore, cannot be controlled either by mandamus or by prohibitions.

For the foregoing, we hold that, upon the facts of record, the petitioner is not entitled to the remedies applied for. The instant petition is, therefore, dismissed, with the costs taxed against the petitioner.

It is so ordered.

Diaz, Pres. J., and *Paredes, J.*, concur.

Petition dismissed; costs against petitioner.

[Nos. 10231–R. and 10234–R. January 23, 1954]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* AGUSTIN CASTAÑEDA KHO CHOC, defendant and appellant.

CRIMINAL LAW; ROBBERY; INTENTION TO DEPRIVE ONE OF OWNERSHIP, WITH CHARACTER OF PERMANENCY, IMPORTANT; CASE AT BAR.—Since the accused, though breaking the locks of his father's desk, never had the intention of depriving his father of the ownership of the revolver and ammunitions with any character of permanency, but only to threaten his father into giving him money, and since the other essential element of taking (apoderamiento) is not present in the instant case, the accused could not be convicted of robbery. He is, however, guilty of grave threats for having threatened his father.

APPEAL from a judgment of the Court of First Instance of Manila. Macadaeg, *J.*

The facts are stated in the opinion of the court.

Cipriano Azada for defendant and appellant.

Assistant Solicitor General Lucas Lacson and *Solicitor Mariano M. Trinidad* for plaintiff and appellee.

FELIX, *J.:*

At about 5:00 o'clock in the afternoon of September 2, 1952, Kho Yee saw her brother, Agustin Castañeda Kho Choc, entering the bedroom of their father, Jose Castañeda Kho, located on the second floor of their house at No. 440 Sto. Cristo Street, Manila, holding a hammer

and a screw driver. Out of curiosity Kho Yee peeped through the cracks of the wall and she saw her said brother destroy the locks of the drawers of their father's desk and take therefrom a .45 caliber revolver and a box containing 30 rounds of ammunition, valued at ₱250, belonging to their father. Kho Yee hurriedly ran downstairs and told her father what she had just witnessed and they both went hurriedly upstairs to verify what was happening. Upon reaching the top flight they met Agustin who, pointing the revolver at his father, addressed him thus: "Putang ina mo, if you do not give me ₱50,000 I am going to kill you." The father being scared raised his hands and told his son to wait as he was going downstairs to get the money, but instead of doing this the father repaired to the Meisic Police Station to report the matter. A short while afterwards the father, accompanied by four policemen in plain clothes returned to the house and Agustin upon seeing them cocked the gun and threatened to shoot them, but in spite of these first acts of hostility later he peacefully surrendered to the policemen who then took him to the police station where he made the sworn statements Exhibits F and F–1.

Because of these facts Agustin Castañeda Kho Choc was charged in the Court of First Instance of Manila in two separate cases with the crimes of robbery (Crim. Case No. 20077–CA–G. R. No. 10231–R) and grave threats (Crim. Case No. 20078–CA–G. R. No. 10234–R) which were tried jointly by agreement of the parties. After hearing the court found the accused guilty thereof and sentenced him to suffer in the case of robbery, the penalty of from 4 years, 9 months and 11 days of *prisión correccional,* as minimum, to 6 years, 8 months and 1 day of *prisión mayor,* as maximum, and to pay the costs; and in the case of grave threats to suffer the penalty of from 2 months and 1 day of *arresto mayor,* as minimum, to 2 years, 4 months and I day *prisión correccional,* as maximum, and to pay the costs. From these verdicts the defendant appealed to us and now his counsel maintains that the lower court erred:

1. In not finding that the accused had no intent to gain in taking his father's pistol; and
2. In finding that the accused threatened his father and that such threats constitute grave threats.

With regard to the case of robbery, there is no denial that appellant took his father's revolver and the box containing 30 rounds of ammunition by force and in the manner stated above, but he contends that intent to gain is an essential element of the crime of robbery and that in the perpetration of the act he was not moved by any *animus lucrandi,* which is shown by the fact that

inside the drawer in which the pistol was kept there were jewels which the accused did not take, thus negating any intention on his part of robbing his father. The Solicitor General retorts that this contention of appellant is untenable because the *animus lucrandi*, which is an essential element in the crime of robbery, is not to be determined by the fact that the culprit did not take *other objects* which he could have easily taken, and that in the case of People *vs.* Fernandez, et al. (Court of Appeals—38 Off. Gaz., 985) it was held that "by gain, is meant not only the acquisition of the thing useful to the purposes of life, but also the *benefit* which in any other sense may be derived or expected from that which is performed", and that the explanation of appellant that he took his father's revolver in order to use it to destroy his own life, granting that to be true, though it was not carried out, is of no moment for it would not contradict the fact that he took the revolver for some benefit.

Intent to gain is an essential element common to both robbery and theft, but we find it immaterial and not decisive and determining factor in the proper solution of the present controversy. The writer of this decision had already occasion to discuss this point lengthily both in the case of People *vs.* Galang et al. (43 Off. Gaz., 577) and in his concurring opinion in the case of People *vs.* Sebastian Mateo (CA–G. R. No. 3514–R, promulgated October 17, 1949). In the case of People *vs.* Galang et al. We said the following:

"ART. 308 of the Revised Penal Code defining the crime of theft, reads thus:

'Theft is committed by any person who, with intent of gain but without violence against or intimidation of persons nor force upon things *shall take* personal property of another without the latter's consent',

and there seems to be no need of pressing too much the proposition that the element of taking referred to in this article, means the act of depriving another of the possession and dominion of a movable thing coupled, like in crimes of abduction (U. S. *vs.* Garcia, 30 Phil., 74) with the intention, *at the time of the 'taking'*, of withholding it with *character of permanency*. In the case at bar, the only witness for the prosecution, policeman Gutierrez, honestly declared and frankly admitted that Leonardo Atienza was known to him, which undoubtedly caused him to entrust the care and custody of the jeep to him, and when he came out of the Dalisay Theater, the other boys informed him that Leonardo Atienza went towards Plaza Sta. Cruz *and was to return soon*. Such being the case, it cannot be properly said that the jeep was removed from the possession of policeman Gutierrez with any character of permanency, and without notice, and although it is true that they were unable to return the jeep to him, that was due to causes beyond their control, and without the least intention on their part to get the property away from its lawful owner * * *."

In the case of People *vs.* Mateo, *supra*, We also said the following:

"The Spanish text of Article 308 of the Revised Penal Code reads, in part, as follows:

'ART. 308. Hurto—Quienes lo cometen.—Cometen hurto los que, con ánimo de lucrarse y sin violencia o intimidación en las personas ni fuerza en las cosas, *se apoderan* de una cosa mueble ejena sin la voluntad de su dueño.'

The meaning of the verb *apoderar* is to make one-self the owner of a thing (*harcerse dueño de una cosa*) placing it under one's control (Dec. of the Sup. Ct. of Spain of Nov. 28, 1903). Considering this definition given by the Supreme Court of Spain of the term *apoderar* or *apoderarse*, in connection with this element of theft, we see that a person who carries away, be it a horse, a carabao or an automobile, *without any design of appropriating it for himself*, but of returning it to the owner, does not come within the scope of the vocable 'apoderarse', necessary prerequisite of all crimes of theft (and of robbery), even though he might derive some benefit or gain from the momentary use or possession of the thing. That is why We maintain, as held in the case of People *vs.* Galang et al., supra, that *'the act of depriving another of the possession and dominion of a movable thing (must be) coupled with the intention, at the time of the taking, of withholding it with character of permanency.* Of course such intention may be frustrated, as it was frustrated in the case at bar.

The decision in the case of People vs. Fernandez et al., supra, was based on the assumption that there was that taking with intent of gain, because in the words of Groizard 'by using things, we derive from them utility, satisfaction, enjoyment, and pleasure, or what amounts to the same thing, real gain.'; or, as the Supreme Court held, 'by gain is meant not only the acquisition of thing useful to the purposes of life, but also the benefit which in any other sense may be deprived or expected from the act which is performed.' Of course, We have no quarrel with either Mr. Groizard or the Supreme Court over the concept of the word 'gain', but We most emphatically maintain that the scope of such term, as held by said authorities, does not affect or contradict our contention relative to the element of 'taking'. It is true that Groizard, whose knowledge of penal laws We are the first to recognize, seems to hold a contrary view, but that is no reason for a Court to blindly follow his opinion without submitting it to mature study and consideration. So let Us see how he delves on this subject. From this work on "El Codigo Penal de 1870", Vol. VI, p. 53, 2nd Edition, the following, translated into English, is quoted:

'And what will happen if from the record appears that the defendant, by moral or physical force, has taken the thing, not with intent to appropriate it from himself, nor to dispose of its ownership, but merely to use the same and return it afterwards to the owner? Let us suppose that a person who needs a horse to go from one place to another, meets a man on the way and violently despoils him of his horse. If after using the horse for which the offender had taken possession of it, he returns the animal to the owner, will he be liable for robbery? Of course. Because the intent to gain evidently exists. By using things we derive from them utility, satisfaction, enjoyment and pleasure, or what amounts to the same thing, real gain. To make use of an object is, therefore, an act which from the standpoint of *animus*

lucri has all the necessary objectivity to give place either to a crime of robbery with violence against persons, or with force upon things, as the case may be.'

Under the circumstances of the case of the example We maintain that *if the return of the horse was an afterthought of the occurrence, the crime, of course, was one of robbery; but if at the time of the taking (apoderamiento) of the horse the wrong-doer already had the intention of returning that property to the owner, under no circumstances could he be held liable for robbery, even though he proposed to derive some benefit from his acts.* He would be guilty of coercion or unjust vexation, crimes which are often committed under the impulse of an idea of gain, albeit this motive is not an essential element of such offense. In support of his contention Mr. Groizard himself cites two old decisions of the Supreme Court of Spain, dated June 3, 1872, and February 16, 1886. The first one does not uphold his theory, and the second has a contrary effect. In the last decision the defendants were acquitted of the crime of robbery, notwithstanding the fact, shown on the record, that the defendants having met another person against whom they entertained previous resentment, intimidated him at the point of a gun, compelled him to lie on the ground and in that situation seized from him the weapon that man was carrying, which the assailants returned on the following day. Although the reason for such acquittal was that there was no intent of gain in the taking of the weapon, and therefore, the outcome of the case has no bearing on the point under consideration and cannot uphold Mr. Groizard's opinion, it seems apparent that in said case the culprits could have derived some benefit by using the arm."

* * * * * * *

'The prime criterion, when property is UNLAWFULLY TAKEN BY FORCE, *determining whether robbery or coercion has been committed,* is the intention of the accused.' (U. S. *vs.* Villa Abrille, 36 Phil. 807).

The French Correctional Court of Saint-Etienee, contrary to the view held in the case of People *vs.* Fernandez et al., supra, has declared in its decision of July 2, 1928, that *the act of an individual that takes an automobile and uses it for a ride, abandoning it afterwards, does not constitute the crime of theft.*"

In the case at bar it seems clear from the facts shown that appellant never had any intention of depriving his father of the ownership of the revolver and ammunition with any character of permanency. Therefore, and independently of the attendance or not of the element of intent to gain, we find that the other essential element of *taking,* that is, *"apoderamiento"* according to the Spanish text, which implies, as aforesaid, the intention to make oneself the owner of a thing (hacerse dueño de una cosa), placing it under one's control, as stated in the decision of the Supreme Court of Spain of November 20, 1903, is not present in the case at bar. Hence, the defendant could not be convicted of robbery under the facts of this case (CA–G. R. No. 10231–R).

With regard to the offense of grave threats, appellant denies having threatened his father, but that is a matter of credibility of the witnesses which is usually left to the judicious appreciation of the trial judge who is in a better position than the appellate court to gauge the credence deserved by the witnesses testifying before him, so that his findings are ordinarily accepted unless the record shows any reason for their disturbance, which does not exist in the case at bar.

The crime committed by appellant comes within the purview of article 282, No. 1, of the Revised Penal Code, punishable with a *penalty next lower by two degree than that prescribed by law for the crime threatened*, which in the case at bar is *parricide*, punished with *reclusión perpetua* to death. We cannot, however, impose this penalty because the information is silent as to the relation existing between the offender and the offended party, and as it is worded we have merely to consider the crime threatened as simple *homicide* punished with *reclusión temporal* in its full extent (Art. 249, RPC). Lowering this penalty by two degrees we descend to the penalty of *prisión correccional*, also in its full extent, and considering that in the execution of the crime concurred the generic aggravating circumstances of relationship (Art. 15, RPC) and that it was committed with insult or in disregard of the respect due the offended party on account of his rank or age (Art. 14, No. 3, RPC), which shall be merged into only one circumstance that can be appreciated even though no averment thereof is made in the information (People *vs.* Collado, 60 Phil., 610), the penalty imposable to appellant for grave threats is *prisión correccional* in its maximum period (Art. 64, No. 3, RPC), or from 4 years, 2 months and 1 day to 6 years.

Wherefore, the decision in Criminal Case No. 20077—CA–G. R. No. 10231–R—is hereby reversed and the defendant freely acquitted of the crime, with costs *de oficio*. In Criminal Case No. 20078—CA–G. R. No. 10234–R—the defendant is found guilty of grave threats, and applying the provisions of the Indeterminate Sentence Act he is sentenced to suffer the penalty of from 4 months and 1 day of *arresto mayor* to 4 years, 2 months and 1 day of *prisión correccional*. With this modification as to the penalty of incarceration, the decision rendered in this case is hereby affirmed, with costs against appellant.

The .45 caliber pistol, Serial No. 782622, Colt, with 7 rounds of ammunitions and one box containing 30 rounds of ammunitions shall be returned to the owner, Jose Castañeda Kho, if he is duly licensed to possess the same.

Rodas and *Peña, JJ.*, concur.

Judgment modified.

[No. 10392-R. January 26, 1954]

O. B. FERRY SERVICE CO., plaintiff and appellant, *vs.* P. M. P. NAVIGATION CO., defendant and appellee

1. BOARD OF MARINE INQUIRY; ITS FINDINGS, NOT CONCLUSIVE AND BINDING UPON COURT OF FIRST INSTANCE.—An action for damages arising from and caused by the sinking of a vessel falls squarely within the jurisdiction of the Court of First Instance. In the exercise thereof, it is obvious that said court had the right to weigh the evidence presented before it and, on the strength thereof, to determine the question of whether appellee and its agents had been negligent. To hold that the decision rendered by the Board of Marine Inquiry is conclusive upon said court would virtually deprive the latter of the right to use its own discretion and compel it to accept the findings of a body that had conducted an investigation merely to decide whether the marine certificates of certain marine officers should be suspended or cancelled on account of misconduct, intemperate habits or negligence in the performance of their duties. Moreover, it would be obviously unfair to hold such findings as conclusive upon herein appellee who was not a party to the investigation conducted by the aforesaid board. That the findings under consideration are final upon the question of whether or not the marine certificates or licenses of the marine officers investigated should be suspended or cancelled may be admitted, but that does not justify the view that such findings are also conclusive and binding upon the lower court and determinative of the rights of the herein appellee.
2. CONTRACTS; CHARTER PARTY; VAGUENESS OR AMBIGUITY RESOLVED AGAINST THE PARTY WHO PREPARED IT.—When a charter party is prepared under the direction of the owner of the vessel, it goes without saying that whatever vagueness or ambiguity there might be in its provisions must be resolved against it, pursuant to the provisions of article 1288 of the old Civil Code as well as of article 1377 of the new, and as held by the Supreme Court in Heacock, et al., *vs.* Macondray, 42 Phil., 205 and Rubio *vs.* Villanueva, 45 Phil., 482.

APPEAL from a judgment of the Court of First Instance of Cebu. Seguin, *J.*

The facts are stated in the opinion of the court.

Filiberto Leonardo for plaintiff and appellant.
I. V. Binamira and *B. Barria* for defendant and appellee.

DIZON, *J.:*

This action was commenced in the court below to recover damages arising from and caused by the sinking of the motor vessel "Trede". From the decision of said court dismissing the complaint, the plaintiff appealed and now urges us to reverse the same upon these grounds:

1. "The lower court erred in not holding that the decision of the special board of Marine Accidents, Port of Cebu, as confirmed by the Commissioner of Customs, is final and conclusive, and in declaring that said decision is not supported by evidence.
2. "The lower court erred in not declaring the defendant negligent in the sinking of the *M/V "Trede"*.

3. "The lower court erred in holding that the negligence in not insuring the vessel is attributed to the plaintiff and not to the defendant.

4. "The lower court erred in not holding that the defendant is liable to pay damages to the plaintiff in the sum of P480,000."

The following facts are not disputed:

On July 11, 1949 the *M/V Trede* was chartered by appellant to appellee for three months from and after July 8 of said year at a monthly rent of ₱1,000 payable in advance during the first days of every month. On August 4, after said vessel had been certified to be seaworthy and fit to navigate by the Hulls and Boilers Inspector of the Bureau of Customs, Port of Cebu, she made the first trip from Cebu to Legaspi City loaded with 500 drums of Caltex gasoline and 1,000 tins of kerosene, and returned safely five days later to the port of Cebu where she was subjected to routinary inspection by her captain and officers.

On August 10 of the same year the vessel again left Cebu for Legaspi City with 500 drums of Caltex gasoline and 1,000 tins of kerosene under the command of Capt. Enrique Bellen. Upon reaching Buoy No. 10 within the jurisdiction of Cebu, the vessel had to stop because typhoon signal No. 1 was raised. The weather having improved the following day, she renewed the trip but unfortunately she later sank and became a total loss at a place three miles away from Almagro Cove. Her officers and crew were saved but not its freight.

The sinking was investigated by a board composed of the Collector of Customs of Cebu, Jose Gallofin, the Inspector of Hulls and Boilers, Amado Macol and by the chief pilot of the port, Joaquin Alix, in accordance with the provisions of the Administrative Code and after hearing the interested parties said board rendered the decision Exhibit A–5 finding the captain and first officer of the vessel guilty of negligence and, as a result, they were suspended for a period of thirty days.

The present action is based upon the theory that the sinking of the vessel in question was mainly due to the negligence of the captain and first officer and secondarily to the fact that she was overloaded. The main defense of the appellee, on the other hand, was to the effect that the sinking was due to force majeure. To determine the main issue thus raised the lower court admitted in evidence the testimony of the captain and officers of the ill-fated vessel before the Board of Marine Inquiry (Exhibit A–6) and other testimonial and documentary evidence now in the record. After considering the whole thereof, in the light of the finding of negligence made by the afore-

said board in its decision (Exhibit A–5), the lower court held the contrary view as follows:

Basándose en los hechos arriba expuestos, la Junta que practicó la investigación del accidente, en su decisión Exhibit A–5, declaró al capitan y al primer oficial culpables de negligencia. La negligencia, segun dicha decisión, consistió en que ninguno de los dos habia ordenado el funcionamiento de las bombas cuando notaron la posición abnormal del barco. El primer oficial no mandó funcionar las bombas porque creia que la inclinación del barco se debia solamente a los golpes de las olas. Por su parte, el capitan ya no ordenó que se tomase dicho remedio porque cuando él preguntó al primer maquinista si las bombas funcionaban, éste le dió una contestación afirmativa. De hecho, segun el citado primer maquinista, por su mandato, las bombas funcionaron desde que notó que el barco estuvo inclinado, cuya declaración, fue corroborada por el tercer maquinista. Bajo todas estas circunstancias el Juzgado opina, que la conclusion de la Junta Investigadora de que, el capitan y el primer oficial, incurrieron en negligencia en el cumplimiento de sus deberes, no esta apoyada por las pruebas. Pero aun suponiendo que los mismos incurrieron en una negligencia tecnica, pero dicha negligencia no fue indudablemente la causa del hundimiento del barco. En la decisión Exhibit A–5 no se dice cual fue la causa de dicho hundimiento ni tampoco existen pruebas categóricas sobre el particular, pero todos los testigos opinan, que el hundimiento occurrió porque los golpes del mar causaron un agujero en el casco, debajo d esu linea de flotación, en cuyo agujero entraba suficiente cantidad de agua que las bombas resultaron impotentes para desalojarla. Es muy probable que algunas de las planchas de hierro del casco ya estaban bastante podridas y que los golpes del mar abrieron un agujero en las mismas pero como de este hecho no tuvieron conocimiento tanto los oficiales del barco como la demandada, de ahi que no se ha podido tomar las precauciones necesarias. Conste que en el contrato de arrendamiento Exhíbit "B", que se otorgó el 11 de Julio de 1949, o sea, escasamente un mes antes del náufragio, se dice que el barco en cuestión estaba en buenas condiciones, de tal suerte que la demandada, confiada en dicha manifestación, operó dicho barco sin haber antes mandado inspeccionar su casco." (Record on Appeal, pp. 20–21).

After a careful review of the evidence, we have found nothing to justify a reversal of the conclusion arrived at by His Honor, the Trial Judge. However, to what is stated in the appealed judgment, we wish to add that in view of the fact that, after the execution of the charter party contract on July 11, 1949, the vessel was certified to be seaworthy and fit for navigation by the Hulls and Boilers Inspector of the Bureau of Customs, Port of Cebu, we must accept that the vessel was really in such condition. This, however, does not necessarily mean that she was safe from, and could overcome any and all dangers that she might thereafter encounter at sea. Her certified seaworthiness is no conclusive argument against the expressed opinion of witnesses in this case to the effect that, due to the force and volume of the waves encountered during her last trip a hole was made and opened on the hull of the vessel below the floatation line, through which

such a big volume of water went through that her pumps were insufficient for the purpose of clearing the same.

It is now contended that the lower court erred in not considering the decision of the Board of Marine Inquiry mentioned heretofore as final and conclusive and in reversing the same.

All that we need say in this connection is that the present action for damages falls squarely within the jurisdiction of the trial court. In the exercise thereof, it is obvious that said court had the right to weigh the evidence presented before it and, on the strength thereof, determine the question of whether appellee and its agents had been negligent. To hold that the decision rendered by the Board of Marine Inquiry is conclusive and binding upon said court would virtually deprive the latter of the right to use its own discretion and compel it to accept the findings of a body that had conducted an investigation merely to decide whether the marine certificates of certain marine officers should be suspended or cancelled on account of misconduct, intemperate habits or negligence in the performance of their duties. Morover, it would be obviously unfair likewise to hold such findings as conclusive upon herein appellee who was not a party to the investigation conducted by the aforesaid board. That the findings under consideration are final upon the question of whether or not the marine certificates or licenses of the marine officers investigated should be suspended or cancelled may be admitted, but that does not justify the view that such findings are also conclusive and binding upon the lower court and determinative of the rights of the herein appellee.

With reference to the claim that the vessel was overloaded at the time of the sinking, we find that, as held by the trial court, the exact weight of the gasoline and kerosene loaded on board was not duly proven. Upon the other hand, the record discloses that the officers of the port of Cebu had given the corresponding permit for the vessel to carry such load before she left port on August 10. It is clear therefore that the question must be decided adversely to appellant.

The last important contention of appellant is that appellee was negligent in not insuring the vessel.

It appears in this connection that, according to paragraphs 5 and 6 of the charter party (Exhibit B), the charterer shall operate the vessel in question on the coastwise trade "except those places expressly banned by her insurance policy in effect during the lifetime" of the charter party, and that the charterer had assumed the obligation to pay the insurance premiums, although the benefits to be derived thereunder were to accrue to the owner of the vessel.

It is not clear therefore which of the two contracting parties was under obligation to insure the vessel. Moreover, it may be inferred from the contract that the vessel was supposed to carry an insurance at the time of the execution thereof and that appellee had only assumed the obligation to pay the premiums due thereunder. If actually that policy had already lapsed at the time, we believe that the party to be benefited by the new insurance policy to be taken, namely, the herein appellant, was the one in duty bound to see to it that the insurance policy was taken. Such obligation has not, to say the least, been clearly imposed upon the other party.

Moreover, considering the evidence to the effect that the charter party in question was prepared under the direction of appellant, it goes without saying that, whatever vagueness or ambiguity there might be in its provisions must be resolved against it, pursuant to the provisions of article 1288 of the old Civil Code as well as of article 1377 of the new, and as held by the Supreme Court in Heacock, et al. *vs.* Macondray, 42 Phil., 205 and Rubio *vs.* Villanueva, 45 Phil., 482.

Upon all the foregoing, we are therefore of the opinion and so hold that the trial court did not commit the errors assigned in appellant's brief, and the appealed judgment being in accordance with law and the evidence, the same is affirmed, with costs.

It is so ordered.

Concepcion and *De Leon, JJ.*, concur.

Judgment affirmed, with costs.

[No. 7129-R. January 28, 1954]

ESTEBAN AGUILAR, plaintiff and appellant, *vs.* PHILIPPINE AMERICAN DRUG CO., (BOTICA BOIE), defendant and appellee.

CORPORATION LAW; ONLY BOARD OF DIRECTORS HAS AUTHORITY TO BIND CORPORATION.—Under our Corporation Law only the board of directors of a corporation, acting as such, has the authority to bind the corporation (sec. 48, Corporation Law; Superior Gas & Equipment Co. *vs.* Jurado, 49 Off. Gaz., 4409). The general rule of law, invoked by the appellant, that if an officer of the corporation employs a person to perform services for the corporation and such services are performed with knowledge of the directors and they receive the benefits thereof without objection, the corporation is liable, only holds true where the statute is not specific. Where, as in this jurisdiction, the law clearly provides that "the expression of the corporate will is vested in the Board of Directors and therefore only the majority of the Board of Directors acting as such has the authority to bind the corporation" such rule does not apply (Superior Gas and Equipment Co. *vs.* Jurado, supra)

APPEAL from a judgment of the Court of First Instance of Manila. Panlilio, *J.*

The facts are stated in the opinion of the court.

Estanislao A. Fernandez, Jose R. Jacinto and *Leandro H. Fernandez, Jr.* for plaintiff and appellant.

Araneta & Araneta for defendant and appellee.

NATIVIDAD, *J.:*

The plaintiff, Esteban Aguilar, brought this action to recover from the defendant, Philippine American Drug Co. (Botica Boie), the following amounts:

For plaintiff's separation from the service of defendant company without notice	₱1,200.00
For payment for overtime services rendered to defendant from May 1946 to April 30, 1948, or a total of 711 days	₱7,110.00
For salary for 3 months during plaintiff's absence in the United States	₱3,600.00
For one-half of plaintiff's travelling expenses back and forth to the United States	₱1,120.00
For the amount of two checks deposited with the defendant company to cover shortage in plaintiff's income tax not used	₱350.00
For the amount of a check delivered by Sears, Roebuck and Company of Massachussetts, U.S.A. for the account of plaintiff	₱97.74
Salary of plaintiff at the rate of ₱1,200.00 a month from January 1949 until he is reinstated in his work in defendant company	

Defendant's defense consists of specific denial of the averments in the complaint and several special defenses. After, trial, the lower court rendered judgment, absolving the defendant of plaintiff's complaint, with the costs against the latter. From this judgment, the plaintiff appealed.

The evidence of the plaintiff tends to show that he entered the services of the defendant on May 15, 1946 as manager of the latter's branch in Legaspi, Albay, at a monthly salary of ₱600, which was gradually increased until it reached ₱1,200 per month. No written agreement was entered into concerning plaintiff's employment, but the latter claims that he delivered to John E. Magda, then general manager of the defendant, with whom he took up the matter, a statement of the terms under which he agreed to serve the defendant, which was submitted to the latter's board of directors. Such terms were: (1) that his basic salary would be ₱1,000 a month; (2) that he was to be granted two weeks vacation leave of absence with pay for every year of service or fraction thereof; (3) that he was to be paid a bonus equivalent to one-month salary for every year of service or fraction thereof; (4) that he was to be paid for overtime work including Sunday's and holidays, and (5) that he was to be granted one and one-half month extended leave of absence to a foreign country for every year of service or fraction thereof, and reimbursed of one-half of the travelling

expenses back and forth. Plaintiff stated that John E. Magda advised him that the board of directors of the defendant had approved these terms and conditions.

On September 1947 the plaintiff was sent by the defendant to Legaspi, Albay, to open and take charge of a branch in that city. In the month of April 1948, while the plaintiff was serving as a manager in this branch, a typhoon lashed the region. The plaintiff, in order to save the products of the defendant from the effects of that typhoon, worked, soaked in water, the whole night of the storm, and as a consequence he contracted kidney trouble. Upon advice of his physician the plaintiff decided to seek treatment of his ailment in the United States and notified the defendant of his going. To secure a certificate of clearance the plaintiff paid his income tax as tentatively assessed by the Bureau of Internal Revenue, and before departing left with Mr. Rubio, cashier of the defendant, two checks, one for the amount of ₱250 and another for ₱100, to cover whatever amount he may later be found short in the payment of his income tax. These checks were cashed by the defendant, but the amounts were not used for the purpose for which they were intended.

The plaintiff finally left for the United States on April 21, 1948, and stayed there during the period May to December 1948. Upon his arrival in the Philippines in the month of January 1949, fully recovered from his ailment, he reported for duty to Charles M. Holmes, then general manager of the defendant. The latter told him that his reinstatement in the service will have to be decided when one Mr. Delgado, another employee of the defendant, arrives from Davao in the month of May 1949. Up to the time, however, this action was heard in the lower court on July 27, 1950, the plaintiff has not been reinstated in the service of the defendant.

The plaintiff further testified that he has not received remunerations for the overtime service he had rendered to the defendant since his employment until he left for the United States; and that he refused to receive a check for the sum of ₱347.74 which the defendant offered to him in payment of the check for ₱250 he left with Mr. Rubio before his departure and of the ₱37.74 delivered on his account to the defendant by Sears, Roebuck and Company, because it did not include the amount of the other check of ₱100 which he also left with Mr. Rubio before his departure for the United States and the delivery of the check was conditioned that it was in full payment of all his claims against the defendant.

The evidence of the defendant discloses that the plaintiff entered its services in the month of May 1946 at a monthly salary of ₱600, which was increased from time to time until it reached ₱1,200 a month, without any contract in

writing and without any condition, that the board of directors of the defendant has not authorized its then general manager, John E. Magda, to enter into any agreement with the plaintiff regarding the conditions of the latter's employment in the corporation, that at the time the plaintiff entered the service of the defendant, it was the latter's policy not to enter into any written contract of employment with any of its employees, that in the month of March 1948 the plaintiff submitted to the board of directors of the defendant an application for leave of absence to go abroad for the treatment of his kidney ailment; that on March 9, 1948, John E. Magda, then general manager of the defendant, communicated to the plaintiff that the board of directors of the defendant had denied his application for leave and further resolve that in view of the fact that the company was then in the process of reorganization, any employee taking leave of absence in that year would be considered resigned from the service and that his reinstatement will depend on the existence of a vacancy upon his return; that upon receipt of this communication the plaintiff asked for a reconsideration of the decision of defendant's board of directors; that on April 3, 1948, Charles M. Holmes, then the latters general manager, informed the plaintiff, thru a memorandum, that if he should decide to go on leave the basis upon which he takes the leave would be that no compensation will be paid him for the period of his leave and in addition his return to the service of the company would depend on whether there is a vacancy at the time; that on April 21, 1948, before departing for the United States, the plaintiff issued in favor of the defendant and deposited with its cashier a check in the amount of ₱250 to cover whatever amount he may be found short in the payment of his income tax, for which a receipt was issued by said cashier; that on the same date plaintiff issued in favor of the defendant another check for the sum of ₱100 in exchange for cash in the same amount which he received from one Mrs. Rodriguez, an employee of the defendant; and that in the month of January 1949, when the plaintiff returned from the United States and sought reemployment in the defendant, there was no vacancy in the latter's office.

The main question for determination in this appeal may be reduced to the following propositions: (1) Whether or not the employment of the appellant in the service of the appellee was under the terms claimed by him in his pleading and testimony, and whether or not such terms, if they in fact existed, were binding upon the latter; (2) Whether or not the separation of the appellant from the service of the appellee was unjust and illegal, and the latter is bound to reemploy the former and pay his salary from the time of his separation until he is reemployed, and (3) Whether or

not the trial court erred in holding that the check for the amount of ₱100, issued by the appellant in favor of the appellee prior to his departure to the United States, was in exchange for cash money.

The question raised under the first proposition is in the main one of fact. For the point raised by the appellant regarding the adverse ruling of the trial court on his attempt to establish the alleged terms under which he was employed by the appellee, is a point of procedure which does not call for an extended discussion, as its resolution, one way or the other, will not materially affect the main issue for determination in this appeal. The principal act of the trial court which is assailed by the appellant under this proposition is its finding that the appellant was accepted in the service of the appellee without any contract of employment and without the terms and conditions claimed by the appellant. It is alleged that this was error. We do not share this view. We have carefully examined the evidence of record and have failed to find any valid reason for disturbing such finding. The claim of the appellant is solely based on his testimony which has not impressed us. For it is not only uncorroborated by any other evidence of record, but is enervated by the acts and admissions of the appellant himself. It will be noted that appellant's claim as regards the conditions under which he entered the service of the appellee and the alleged information relayed to him by John E. Magda that such terms and conditions had been approved appellee's board of directors is not corroborated by any evidence, either direct or circumstantial. The appellant did not make even an attempt to put John E. Magda on the witness stand to testify on this point. There is no showing that the appellant was possessed of certain special qualifications as to induce the appellee to except his case from its general policy at the time of not extending any written contract of employment to any of its personnel or accept conditions under which such personnel is employed in its service. The appellant was the one who applied for employment in the appellee's service, and one who applies for an employment ordinarily is not in a position to impose conditions on the employer for his employment. Moreover, if his claim as the conditions of his employment were true, we find no explanation, at least the appellant did not give any, why he agreed to begin in the service of the appellee with a salary of only ₱600 per month, failed to enjoy the alleged two weeks vacation leave of absence with pay every year, to collect the bonus of a month salary for every year of service or fraction thereof, or to claim pay for overtime services during his about two years of service with the company. It is also not explained why he did not invoke his rights under the alleged terms and conditions of his employment, when his application for leave of absence was

denied, but merely recited in his letter to Charles M. Holmes the services he had rendered the company during the period of his employment and stated that he was promised by Mr. Magda a "periodical vacation trip" as is customary in other firms (Exhibit "2–A"), and did not insist on such alleged rights when Charles M. Holmes, then general manager of the appellee, advised him on April 3, 1948 that his leave would be on the basis that there will be no compensation paid for the period of his leave and in addition his return to the company will depend on whether there is a vacancy at the time (Exhibit "1–A").

Furthermore, even granting that the appellant had in fact imposed the terms and conditions claimed by him for entering the service of the appellee, and that John E. Magda, then general manager of the latter had accepted them, nevertheless such terms and conditions are not binding on the appellee, in the absence of proof that they had been accepted by the latter's board of directors, or that John E. Magda had been authorized by the appellee to agree to such terms. Under our Corporation Law only the board of directors of a corporation, acting as such, has the authority to bind the corporation (Sec. 48, Corporation Law; Superior Gas & Equipment Co. *vs.* Jurado, 49 Off. Gaz., 4409). In the instant case, the evidence does not show that John E. Magda had authority to employ the appellant under such terms and conditions, or that the agreement between the latter and John E. Magda had been ratified by the board of directors of the appellee. As stated elsewhere in this opinion the statement of the appellant on this point is not corroborated by any other evidence of record, either direct or circumstantial. There is, therefore, no sufficient showing that the appellee accepted, or authorized its manager to accept such terms, and, consequently, even granting that they were really imposed, the same are not binding upon it. The general rule of law, invoked by the appellant, that if an officer of the corporation employs a person to perform services for the corporation and such services are performed with knowledge of the directors and they receive the benefits thereof without objection, the corporation is liable, only holds true where the statute is not specific. Where, as in this jurisdiction, the law clearly provides that the expression of the corporate will is vested in the Board of Directors acting as such has the authority to bind the corporation", such rule does not apply (Superior Gas and Equipment Co. *vs.* Jurado, *supra*).

It is contended under the second proposition that the separation of the appellant from the service of the appellee considerably and the ailment for the treatment of which he was arbitrary, unjust and immoral, because his services were not only satisfactory but had benefited the appellee

went to the United States had been contracted in saving its property from destruction. We likewise fail to see the force of the contention. The appellant was not dismissed from the service of the appellee. He was at liberty to remain if he did not like the conditions under which he was allowed to go on leave. Yet, with full knowledge of the fact that if he persisted in going on leave he will receive no pay during the period of his absence and that his reinstatement in the service of the company would depend on whether there was a vacancy at the time of his return, the appellant, presumably acquiescing in such conditions, departed for the United States and stayed there for about seven months. The appellant has our sympathy. Perhaps the conditions of his health required that he go to the United States for medical treatment. But under the circumstances he has only himself to blame. As the claim of the appellee that there was no vacancy in its office to which appellant may be appointed is not even contradicted, there has been no violation by the appellee of its agreement.

The question raised in the third proposition is also one of fact. It is contended that the trial court erred in finding that the check for ₱100, left by the appellant with the cashier of the appellee before he left for the United States in the month of April 1948 was issued in exchange for cash, and that its amount in cash was received by him. After a careful study of the evidence on this point, we find that we cannot disturb the above finding. The statement of the appellant that he issued that check as deposit for possible use in paying whatever amount he may be found short in his income tax does not impress us. Aside from the fact that this statement is not corroborated by any other evidence of record, the same is contradicted by the statement of the cashier of the appellee that the check was issued in exchange for cash which the appellant received on the same date, a statement which finds corroboration in the circumstantial evidence of record. For, if the check for ₱100 was issued for the purpose claimed by the appellant, it is strange that he did not require Mr. Rubio to issue a receipt therefor similar to that issued to him for the first check of ₱250, which he deposited with the company for that purpose. We do not see furthermore the necessity for him to issue two checks for the same purpose and on the same occasion.

We, therefore, find that the judgment appealed from is in accordance with law and supported by the evidence. Hence, the same is hereby affirmed, with the costs taxed against the appellant.

It is so ordered.

Diaz, Pres. J., and *Paredes, J.*, concur.

Judgment affirmed.

[No. 8575-R. January 28, 1954]

THE MUNICIPALITY OF SAN FERNANDO, PROVINCE OF PAMPANGA, plaintiff and appellant, *vs.* JOSE VALENCIA, JR., and JESUSA QUIAMBAO, defendants and appellants.

1. EMINENT DOMAIN; EXPROPRIATION; COMMISSIONER'S REPORT; SCOPE OF COURT'S AUTHORITY OVER COMMISSIONER'S REPORT.—The law clearly states that the court, in acting upon the commissioner's report in an expropriation case, may accept it or set it aside, accept it in part or reject it in part, and make such order or judgment "as shall secure to the plaintiff the property essential to the exercise of his right of condemnation and to the defendant just compensation for the property so taken." (Rule 69, sec. 9, Rules of Court) Such authority, according to the Supreme Court in Manila Railroad Co. *vs.* Velasquez, 32 Phil., 286, 290, is not limited to accepting or rejecting in full any of the constituent items of the report, but the court may validly increase or diminish any or all of such items. Other cases hold that this authority may be exercised though there is nothing to indicate prejudice or fraud on the part of the commissioners.
2. ID.; ID.; ID.; ID.; CRITERIA FOR DETERMINING REASONABLE VALUE OF LAND EXPROPRIATED.—What ought to be reviewed by the court is not so much the act, or the appearance of it, of fixing the value by a seemingly arbitrary standard like "splitting the difference" between values variously fixed by the commissioners, as the evidence that supports or fails to support it. In other words, a court may simply split the difference without elaborating on its reasons for so doing, and yet the value thus fixed may be supported by the preponderance of the evidence. On the other hand, it may choose to fix any of the values variously recommended and still incur in error because the award is not based upon sufficient evidence or upon generally accepted criteria for measuring values. (City of Manila *vs.* Estrada, 25 Phil., 208). Fair or reasonable market value is defined as that which the property would bring where it is offered for sale by one who desires, but is not obliged to sell it, and is bought by one who is under no necessity of having it. It is well settled that the value of property taken by eminent domain should be fixed as of the date of the proceedings (Manila Railroad Co. *vs.* Caligsihan, 40 Phil., 326).

APPEAL from a judgment of the Court of First Instance of Pampanga. Bayona, *J.*

The facts are stated in the opinion of the court.

Provincial Fiscal of Pampanga Antonio G. Ibarra for plaintiff and appellant.—*Valeriano Silva* and *Abel Ocera* for defendants and appellants.

DIAZ, *Pres. J.:*

Both contending parties have appealed the decision of the lower court in this expropriation case, raising, however, only the issue of whether the compensation adjudged to be paid the defendants by the plaintiff municipality on

account of the taking of the former's land is reasonable or not.

The land in question is located within the municipality of San Fernando, Pampanga, and is separated from the old public market site only by the six-meter wide Perez de Pulgar Street. Claiming need of the land for use in connection with or as part of the public market site, the municipality of San Fernando instituted expropriation proceedings against the owners and asked the court to fix the reasonable value of said land at not more than ₱5,000. In their answer, the defendants manifested that they had no objection to the proposed expropriation, but prayed that they be paid ₱50 per square meter, or a total of ₱23,580, for their land which, they alleged, was its fair and reasonable market value. In accordance with the procedure in such cases, the lower court appointed commissioners to receive evidence of value and, after receiving their report, rendered judgment fixing such value at ₱35 per square meter or a total of ₱16,695.

The plaintiff municipality now claims that the value of the property ought properly to have been fixed at ₱20 per square meter only, while the defendants insist on their original claim of ₱50 per saquare meter.

At the hearing before the commissioners, the plaintiff municipality sought to prove that ₱20 per square meter was a fair and reasonable price by presenting the tax declaration covering the property (No. 5474) which showed that it was at that time assessed for tax purposes at ₱10 per square meter only; several other tax declarations and deeds of sale executed in favor of the municipality in April and May, 1950, or shortly before the commencement of the present proceedings, showing that nearby properties assessed at similar values had been sold to the municipality by their owners at a uniform price of ₱20 per square meter; and minutes of the Provincial Appraisal Committee; of Pampanga to the effect that on February 27, 1950, said Committee had approved the offer of ₱20 per square meter for the property made by the municipality to the defendants.

For their part, the defendants presented the following evidence: (1) a deed of sale of real property at ₱103.38 per square meter executed by Pedro Aguas in favor of Joaquin Dayrit on September 24, 1947; (2) a second deed of sale at ₱75.47 per square meter executed on November 3, 1947 by Agapita Paras in favor of Pablo Bagnot and Miguela Capati; (3) a third deed of sale at ₱30 per square meter executed by Quirino Abad Santos in favor of Rising T. Yap on June 9, 1950; (4) tax declarations showing that two of the aforementioned properties were assessed for tax purposes at ₱10 per square meter only and the third

at not more than ₱4 per square meter; and (5) a sketch of the market site and its vicinity, purporting to show that the defendants' property is closer or at least as close to said site as the properties covered by the foregoing sales.

On the basis of this evidence, two of the commissioners made a report fixing the reasonable value of the property at ₱50 per square meter. The other commissioner dissented with his colleagues and reported that he found the price of ₱20 per square meter fair and reasonable. The price of ₱35 per square meter fixed by the lower court is, as is expressed in its decision, the mean of the two prices thus recommended.

Such a mode of fixing value seems at first sight rather arbitrary, for it would appear that an assessment of reasonable value ought to have more solid factual basis than a compromise, as it were, between that which the plaintiff in expropriation offers and that which the defendant demands. However, the law clearly states that the court, in acting upon the commissioners' report, may accept it or set it aside, accept it in part or reject it in part, and make such order or judgment "as shall secure to the plaintiff the property essential to the exercise of his right of condemnation, and to the defendant just compensation for the property so taken." (Rule 69, sec. 9, Rules of Court). Such authority, according to the Supreme Court in Manila Railroad Co. *vs.* Velasquez, 32 Phil., 286, 290, is not limited to accepting or rejecting in full any of the constituent items of the report, but the court may validly increase or diminish any or all of such items. Other cases hold that this authority may be exercised though there is nothing to indicate prejudice or fraud on the part of the commissioners.

The case of City of Manila *vs.* Estrada, 25 Phil., 208, presents an almost identical set of facts. The City brought suit to expropriate a parcel of land for use in connection with a proposed new market in the district of Paco. Commissioners of appraisal were duly appointed and, after viewing the land and receiving evidence, being unable to agree, they submitted two reports. The majority fixed a price of ₱20 per square meter and the dissenting commissioner made an estimate of ₱10 per square meter. The lower court "split the difference" and fixed a price of ₱15 per square meter. On appeal by both parties, the Supreme Court overruled the lower court's judgment and fixed the value of the land at ₱10 per square meter on the ground that the clear preponderance of the evidence showed that it was the reasonable value of the land. What is important in relation to the present case, however, is not that the lower court was overruled, but that nowhere in its decision did the Supreme

Court say or even hint that the manner of fixing value by taking the mean of those found or fixed by the commissioners is *per se*, or of itself, improper or beyond the power of the lower court. On the contrary, from the text of the decision of the high court, it may be gathered that what ought to be reviewed is not so much the act, or the appearance of it, of fixing value by a semmingly arbitrary standard like "splitting the difference" between values variously fixed by the commissioners, as the evidence that supports or fails to support it. In other words, a court may simply split the difference without elaborating on its reasons for so doing, and yet the value thus fixed may be supported by the preponderance of the evidence. On the other hand, it may choose to fix any of the values variously recommended and still incur in error because the award is not based upon sufficient evidence or upon generally accepted criteria for measuring value.

The award of the lower court in this case is not without sufficient evidentiary basis, though perhaps it may be criticized for neglecting to state clearly enough the reasons why it could not accept either of the separate findings of the commissioners. The evidence of the plaintiff cannot be regarded as conclusive proof of the value it claims to be reasonable. While it has tried to deny that the sales presented in evidence on its behalf were executed by the vendors in contemplation of expropriation, yet, in view of the close proximity of their respective dates of execution to the date of the commencement of the proceedings, there is much reason to doubt that these vendors would have consented to part with their properties had the latter not been faced with seizure or that they would have agreed to a price of ₱20 per square meter had they not foreseen the prospect of litigation and the expenses and trouble of defending it. Under such circumstances, it can hardly be said that such a price measures up to the classic definition of fair or reasonable market values is defined as that which the property would bring where it is offered for sale by one who desires, but it not obliged to sell it, and is bought by one who is under no necessity of having it. On the other hand, the evidence, too, of the defendants cannot be accepted unreservedly. Two of the sales offered in evidence by them were consummated about three years before the proceedings were instituted. They were not sufficiently contemporaneous to provide a reasonably safe or reliable measure of value at the time of expropriation and it is well settled that the value of property taken by eminent domain should be fixed as of the date of the proceedings (Manila Railroad Co. *vs.* Caligsihan, 40 Phil., 326). The third sale, which was executed on June 9,

1950, a month or so after the action was brought, was for ₱30 per square meter only for property only one block removed from the one now in question. The Court considers it the best evidence of value because, while it is near enough in point of time to the date of expropriation, it was obviously executed without fear or apprehension of such seizure. Allowing for increase in property values in direct proportion to proximity to the market site or business center, the unprejudiced mind may well consider ₱35 per square meter a fair and reasonable value for the defendants' land.

Wherefore, finding no reversible error in the judgment appealed from and holding that the price of ₱35 per square meter secures to the defendants just compensation for their property, the Court hereby afirms said judgment, taxing costs against both parties in equal shares.

It is so ordered.

Paredes and *Natividad, JJ.*, concur.

Judgment affirmed.

[No. 10338-R. February 1, 1954]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MENELEO CASTRO, MAXIMINO BARTOLOME and CELESTINO ALMAZÁN, defendants. MAXIMINO BARTOLOME, defendant and appellant.

CRIMINAL LAW; EVIDENCE; SEPARATE TRIAL; EFFECT OF TESTIMONY OF ONE ACCUSED AGAINST ABSENT CO-ACCUSED.—Statements made by an accused while he was testifying in his favor as defendant during a separate trial granted to him and while neither the co-accused nor his counsel was present cannot, be taken against the co-accused who had no opportunity either to be confronted with his testimony or to cross-examine him. This is true notwithstanding that said testimony was given under oath and before a court of justice.

APPEAL from a judgment of the Court of First Instance of Ilocos Norte. Belmonte, *J.*

The facts are stated in the opinion of the court.

Ruiz, Ruiz, Ruiz & Ruiz for defendant and appellant.

Assistant Solicitor General Francisco Carreon and *Solicitor Rafael P. Cañiza* for plaintiff and appellee.

GUTIERREZ DAVID, *J.:*

This is an appeal from the judgment of the Court of First Instance of Ilocos Norte convicting appellant Maximino Bartolome of *estafa* with falsification of a sweepstakes ticket consisting of four units (Exhibits "A", "A-1" to "A-3") and acquitting his co-defendants Meneleo Castro and Celestino Almazán. Appellant was sentenced to not less than 2 years and 4 months of *prisión correccional* nor more than

4 years, 9 months and 11 days of *prisión correcional*, with the accessory penalties of the law, to pay a fine of ₱300 and to indemnify the offended party the sum of ₱410 with subsidiary imprisonment in case of insolvency but not to exceed one-third of the principal penalty and to pay one-third of the costs.

The appellant now seeks the reversal of said judgment of conviction maintaining that the trial court erred: (1) in finding that he falsified or caused the falsification of Exhibits "A", "A–1" to "A–3"; (2) in finding that there is no evidence that the tickets had already been falsified when they were acquired by him from Meneleo Castro; (3) in presuming that he had already read and seen the newspapers before buying Exhibits "A", "A–1" to "A–3"; (4) in finding that he made no statement to the effect that he did not falsify the tickets nor did he state that he did not have them falsified by somebody else; (5) in finding that "deceit and fraud, and defraudation were proved beyond reasonable doubt" apparently in selling the tickets to Luciano Redondo; and (6) in convicting the appellant instead of acquitting him from the charge.

According to appellant, he was on detail as policeman at post No. 1, junction of Vintar and Sarrat roads, of the town of Laoag, Ilocos Norte, on October 23, 1950, when Meneleo Castro, who was then waiting for transportation to school at 1:30 o'clock in the afternoon, approached him and asked him to buy his sweepstakes ticket because he was badly in need of money. The appellant who was alone in his post asked Castro why he was still selling the tickets when the draw was already finished. At this juncture a jeep arrived and Castro rode on it to school. After his class, Castro returned to appellant and again importuned him to buy the ticket.

It appears that in the same afternoon the appellant, together with Meneleo Castro, called José Respicio and asked him: "If there were sweepstakes tickets for sale, compadre, do you want to buy some?" After the question was repeated to him, Respicio replied that the sweepstakes draw was already held the day before. Appellant responded, "Meneleo Castro is pleading to me that I buy this sweepstakes ticket because he claims he is going to pay somebody to whom he is indebted." Respicio then said, "Yes, but the sweepstakes was drawn yesterday; have you not seen any paper yet?" Appellant answered: "Not yet, I have not seen." Answering a similar question of Respicio, Meneleo Castro replied, "Not yet, Tata, even if I die of cholera if I have seen already the newspaper." Respicio also asked Castro, "Suppose you win?" The latter replied, "If that is the case, I would get the prize, I should not really be selling it, but those two men are collecting a debt I owe them" and pointed to two men in front of the house of Mandac who were walking westward.

When requested by appellant to look at the ticket, consisting of units, Exhibits "A", A–1" to "A–3", Respicio found nothing wrong with the same. Appellant, noticing no alteration or falsification of the tickets, decided to buy from Castro the whole ticket for four pesos. The transaction took place at 2:30 o'clock that afternoon. That was appellant's first time to buy a ticket after a draw although he had already purchased nine tickets of different numbers (Exhibit "D") before the draw.

At 4 o'clock p.m. appellant left his post and proceeded to take another assignment at the market but in the meantime he went to see his co-policeman, Procopio Guerrero, at the Sambrano Station, to check his tickets with the winning numbers in the newspaper, the latter being an agent of the Philippine Charity Sweepstakes who had already received a newspaper at one o'clock in the afternoon. Appellant saw that the ticket he bought won ₱460 and, upon deciding to go to his beat at the market, he met Celestino Almazán, at past 5 o'clock, riding in a jeep in front of the Times Bazaar. He stopped the jeep and asked Almazán for help in cashing his winning ticket since Almazán had many friends who could pay his ticket at a discount. Almazán suggested the Times Bazaar of which he was the bookkeeper-accountant. It turned out that the Times Bazaar did not have sufficient cash.

Almazán suggested to appellant to wait until the following morning when he would help him cash his ticket at the local branch of the Philippine National Bank but the appellant did not agree because he was eager to get money out of his ticket. So Almazán accompanied him to Luciano Redondo who owned a tailoring shop at Rizal Street. They entered the shop at about 6:30 o'clock in the evening, Almazán asking the people in the shop particularly Redondo if that was a place for changing winning sweepstakes ticket, to which Redondo answered in the affirmative and invited appellant and Almazán to come in. Almazán showed the ticket to him. Redondo tallied the ticket with the newspaper report and saw it was a winning ticket with a prize of ₱460 but did not bother to examine the ticket. Redondo and appellant agreed on ₱410 for the ticket. Redondo took the ticket and placed his money on the table after which Almazán recounted the money for the appellant, and then the latter took all the money.

Atty. Hermenegildo Prieto who happened to be at Redondo's place, asked Almazán for a blow out and therewith the latter asked five pesos from the appellant and gave it to Prieto. Almazán did not receive any share from the proceeds of the ticket, but was given one package of Camel by the appellant.

Redondo went to Manila to claim the prize of the ticket he had bought. Redondo's brother-in-law, Tomás Clemente,

presented the ticket, Exhibits "A" to "A–3" for payment in the Sweepstakes Office in Manila on October 30, 1950 but was apprehended by detectives because the ticket was discovered to be tampered. The forgery consisted in the changing by ink, from 3 to 9, of the second figure to the last, to make it appear as 518191, a winning ticket of the eighth place in the sweepstakes draw held on October 22, 1950. Also, the rest of the numbers were retraced by the same pen.

As soon as Redondo arrived from Manila, Almazán suggested to him that they should go to Captain Ruario in the Philippine Constabulary Headquarters who would call for the appellant because the latter owned the ticket. At the PC Headquarters, the appellant and Castro were called and with Almazán and Redondo all of them executed affidavits.

It is undisputed that sweepstakes tickets, Exhibits "A", "A–1", "A–2" and "A–3", bearing the number 518191, were falsified by converting with ink the original number 3 thereon into number 9 to make it appear as the genuine winning number 518191 (Exhibits "B", "B–1" to "B–3"). Appellant admitted having sold said tickets to Luciano Redondo for ₱410 as if they were the genuine winning tickets. However, appellant maintained below and insists here, that since said Exhibits "A", A–1" to "A–3" are the same tickets he had bought from Meneleo Castro and they bear number 518191 so they were already forged at the time he bought them. He further argues that the falsification of the tickets in question cannot be imputed to him for the following reasons; that the forgery, which was well done, would require skill, plenty of time and procurement and selection of ink to be used in the forgery; that from 2:30 o'clock p.m. when he bought the tickets from Castro, until 4 o'clock in the same afternoon when he left to take another assignment at the mraket, he had charge of a heavy traffic which would make it physically impossible for him to commit the forgery; and that he would not do the falsification at the check-point it being a public place.

The conviction of the appellant is predicated on the following findings and conclusions of the trial court:

"* * * The court after a careful examination and consideration of the evidence for the prosecution found out that the said evidence as to the falsification of the sweepstakes tickets, Exhibits "A", "A–1" and "A–3", has not been proved with respect to the accused Meneleo Castro, neither has the falsification thereof been proved on the part of the accused Celestino Almazán. Neither has conspiracy among the three accused been proved. There is no evidence to show that the said tickets were falsified by Meneleo Castro or by Celestino Almazán. The evidence for the defense is to the effect that Meneleo. Castro gave his tickets, Exhibits A, A–1, A–2 and A–3 to the accused Maximino Bartolome to be seen by him and which he (Castro) did not take back from Bartolome because they were tickets which did not win * * *." * * * The evidence for the defense

also shows that the proceeds of the sale of ₱410 were given to the accused Maximino Bartolome with the exception of ₱5 which was spent for a blow out, and neither did Almazán or Meneleo Castro participate or take part of any portion of the proceeds of the sale. If the two accused Celestino Almazán and Meneleo Castro had taken part in the falsification of the said sweepstakes tickets, it is but natural that the said two accused should have participated in the proceeds of the sale." * * * There is no evidence that the said tickets had been already falsified when they were acquired by accused Bartolome from his co-accused Castro. It is improbable that accused Castro had falsified the tickets before selling them to the accused Bartolome because he showed no interest in his tickets as they did not win. If Castro were the falsifier he should have had some purpose for doing it which would be to gain something from the falsification but according to the testimonies of the two accused Maximino Bartolome and Celestino Almazán, the proceeds of the sale of the tickets to Luciano Redondo went all to the accused Maximino Bartolome without any portion thereof to Castro or to Almazán." (Appellee's brief, pp. 6–7)

Seemingly, the trial court, in arriving at its foregoing conclusions relied, in part, on the testimony of Meneleo Castro in the sense that said Castro did not sell the tickets in question to the appellant, but he only gave them to him to be examined or checked by appellant and did not take them back because, after all, they were tickets that won nothing, contrary to what the appellant and his witness, José Respicio, have testified. These two witnesses stated categorically that Castro sold said tickets to appellant for ₱4.

It should be recalled that Castro made the above-mentioned statements while he was testifying in his favor as defendant during a separate trial granted to him and while neither the appellant nor his counsel was present. His testimony, therefore, even though given under oath and before a court of justice, cannot be taken against the appellant who had no opportunity either to be confronted with him (Castro) or to cross-examine him. Besides, we are in doubt as to the trustworthiness of Meneleo Castro. Testifying in the court below he said that he bought the tickets in question for ₱4 from a boy who was standing in front of the market and that he did not sell said tickets to the appellant and remembered the "first two numbers of the last two numbers" thereof as "31" while in his original statement, Exhibit "E", made before the Constabulary, he averred that he did not buy said ticket but it was given to him by a man whom he did not know and perhaps because he, Castro, gave that man a cigarette worth ₱0.05; that he, in turn, sold the ticket to the appellant for ₱4 and that he did not remember the number of the ticket he had sold.

The finding of the court below to the effect that there is no evidence that the said tickets had been already falsified when they were acquired by the appellant from Castro is not correct because Jose Respicio testified that Exhibits "A", "A–1" to "A–3" were the same tickets shown

to him by appellant on the occasion that Castro was selling them to the former; that he saw the number of said tickets—which he noted down after the appellant had paid Castro—it being 518191 and which then appeared as it now appears on the same tickets. (t. s. n. pp. 67, 74 and 76). And the appellant testified that when he bought the tickets now questioned, they had the same number as the one appearing thereon at present. (t. s. n., p. 84). These statements of appellant and Respicio were never contradicted by the prosecution.

Considering the foregoing factual situation, we take that it cannot be safely concluded that no other than the appellant falsified the tickets in question. The suspicious circumstances cited, to wit, that appellant, a policeman of Laoag, Ilocos Norte, who earns a meager salary, had already 9 sweepstakes tickets of different numbers (Exhibit "D"); that it was the first time in appellant's life that he had bought a ticket after a draw; and that he hurriedly cashed the ticket are so consistent with the appellant's innocence as with his guilt. They do not exclude the possibility that others, as Meneleo Castro or the person from whom the latter allegedly had acquired the tickets, have tampered with it before appellant took possession thereof.

A reasonable doubt must, therefore, be resolved in favor of the appellant.

Wherefore, the judgment appealed from is hereby reversed and the appellant acquitted and ordered released from the custody of the law with costs *de oficio*.

Rodas and *Martinez, JJ.*, concur.

Judgment reversed.

[No. 9899–R. February 2, 1954]

CIPRIANO P. RAMIREZ, plaintiff and appellant, *vs.* MANUEL CINCO, defendant and appllee

EVIDENCE; WITNESS; TESTIMONY; HOW TO ASCERTAIN TRUE MEANING OF TESTIMONY OF WITNESS.—To ascertain the true meaning of the testimony given by a witness "everything stated by him as well on his cross-examination as on his examination in chief, must be considered. Facts imperfectly stated in answer to one question may be supplied by his answer to another; and when from one statement considered by itself an inference may be deduced, that inference may be strengthened or repelled by the facts disclosed in another." "We must not select isolated parts of the testimony; its general hearing must be taken altogether." And where there are apparent inconsistencies in the testimony of a witness, they should be reconciled if possible, for perjury is not to be presumed. (3 Moran, Rules of Court, 601–602, 1952 ed.)

APPEAL from a judgment of the Court of First Instance of Rizal. Mejia, *J.*

The facts are stated in the opinion of the court.

Pedro G. Uy for plaintiff and appellant.
Eliseo Caunca for defendant and appellee.

GUTIÉRREZ DAVID, *J.*:

Prior to November 3, 1950, plaintiff and defendant had agreed that the former would make for the latter steel moulds for the manufacture of tablespoons, teaspoons and forks. Said agreement was formalized through a letter (Exhibit "A") which the former sent to the latter for confirmation. Under the aforesaid agreement, plaintiff undertook to make one pair punch and die for cutting tablespoon and one pair punch and die for molding the same, one pair punch and die for cutting teaspoon and one pair punch and die for molding the same, one pair punch and die for cutting tablefork and one pair punch and die for molding the same. The price agreed by the parties was ₱2,000, ₱200 payable upon confirmation by the defendant of the agreement, and the balance of ₱1,800 upon delivery and test of the materials. The agreed period for the delivery of the materials was approximately of 45 days.

Claiming that the defendant has not complied with the terms of said agreement, plaintiff instituted this action in the Court of First Instance of Rizal seeking to recover from defendant damages in the total sum of ₱2,875, itemized in Annex "B" of his complaint, because of defendant's alleged breach of the aforementioned contract.

Defendant admitted the execution of the contract, Annex "A", but denied liability on plaintiff's complaint on the ground that it was the latter who had failed to comply with the terms of said contract.

After hearing on the merits, the court below rendered judgment dismissing the complaint with costs against plaintiff. Hence this appeal. The judgment is now assailed on the ground that the holding of the trial court to the effect that plaintiff has not established the alleged breach of contract by the defendant; that plaintiff has no cause of action; and that defendant was perfectly justified in cancelling the contract, are erroneous so that its judgment should be reversed and defendant-appellee condemned to pay plaintiff-appellant's claims.

During the hearing below plaintiff presented evidence, oral and documentary, whereby the following facts have been established:

Although the letter or contract, Exhibit "A", was prepared on November 3, 1950, it was not actually signed by plaintiff until November 13, 1950 when he received the advance payment of ₱200. Plaintiff had already undertaken more than one-half of the stipulated work when on December 12, 1950, that is, prior to the expiration of the

45-day period, the defendant arbitrarily stopped the work because the latter was losing in his business. Plaintiff introduced in evidence the moulds made by him and called for in the contract (Exhibits "C", "C–1" to "C–9"). Plaintiff itemized the various actual damages suffered by him as follows:

For wages of two mechanics for 30 working days including Sundays and Holidays:	
1 Supervising Mechanic	₱450.00
1 Assistant Mechanic	360.00
For hire and use of one shaper and one Lathe Machine at ₱20 per day	600.00
For Oxy-Acetylene welding	30.00
For Materials used	150.00
	₱1,590.00
To: Damages incurred cancellation of the job, lose of means of livelihood and a job, December 13, 1950 to January 20, 1951—39 days at ₱15 per day	585.00
Expenses incurred in bringing the matter to the Bureau of Labor with a view of seeking a redress, transportation, etc.	200.00
Moral damages suffered during the period from the date of cancellation to date, including mental anguish and worries, loss of a job	500.00
Total	₱2,875.00

After the cancellation of the contract, plaintiff referred the matter to the Bureau of Labor. The parties were called by Mr. Bonifacio Taniega for investigation. Mr. Taniega made an ocular inspection of plaintiff's place of work and found that plaintiff had already done about two-thirds of the work required under the contract, Exhibit "A". The defendant manifested to Mr. Taniega that he was willing to abide by the terms of the contract, Exhibit "A", if and when the articles are finished and provided that the plaintiff would guarantee that he would finish the incomplete portion of the work. The parties arrived at a tentative agreement in the Bureou of Labor. Mr. Taniega accordingly prepared an agreement marked as Exhibit "B" for the plaintiff. This did not materialize for failure of defendant to come back to the Bureau of Labor to sign it. So at the advise of Mr. Taniega, this case was brought to court.

The defendant presented no evidence whatsoever to contradict the foregoing facts established by the plaintiff or to prove his allegations regarding plaintiff's non-compliance with the contract.

Upon reviewing the record we came to the conclusion, and so hold, that the above-mentioned evidence of plaintiff has substantiated the allegations of his complaint and has established a sufficient cause of action.

As grounds for dismissing the complaint, the court *a quo* made the following findings:

"* * * From a review of the evidence, the Court believes that plaintiff's complaint must be dismissed for he has not established the alleged breach of contract by the defendant. He admitted having received the initial payment of ₱200 as required in paragraph 5 of the agreement. The 45-day period stipulated on Exhibit A did not expire until December 17, 1950. He, however, claims that the contract was cancelled on December 12, 1950. The Court believes that this statement is a mere assertion of the plaintiff so as to make it appear that the defendant had prematurely cancelled the contract. According to the plaintiff, he had performed more than one-half of the contract. On the other hand, Mr. Taniega stated that the plaintiff finished almost two-thirds of the work called for under the contract. Granting, therefore, that the cancellation by the defendant of the contract was already made on December 17, 1950, it is apparent that the plaintiff could not have completed the contract by December 17, 1950. But this is not all. Plaintiff's statement that the cancellation was made on December 12, 1950 is belied by his own admission on cross-examination when he stated that he did not comply with the contract. Thus, on cross-examination, the plaintiff made the following fatal admission:

Q. Mr. Ramírez, have you complied with the terms of this Exhibit A?—A. No sir.

It appearing from plaintiff's own admission that he himself had not complied with the contract, Exhibit A, the conclusion is inevitable that the defendant was perfectly justified in cancelling the contract and that the plaintiff has no cause of action against the defendant." (R. on A., pp. 47–49.)

We find the foregoing findings incorrect. Nobody contradicted the averment of plaintiff that he signed Exhibit "A" and received his advance payment of ₱200 on November 13, 1950. Testimony that stands uncontradicted is deemed conclusive. (Cruz et al., *vs.* Asociación Zanjera Casilian, 46 Off. Gaz., 4813.) There is no valid ground for the assumption that plaintiff could not have completed the work by December 17, 1950 or within 5 days from the date (December 12) defendant cancelled the contract. Plaintiff and his assistant mechanic, Serviando Sarmiento, testified that the unfinished work could be concluded in 5 or 7 days more, for, practically what was lacking, was the finishing touch only; and plaintiff might hire more hands or work overtime to finish the work within the remaining portion of the period agreed upon. The isolated negative answer of plaintiff to the question: "Mr. Ramírez, have you complied with the terms of this Exhibit "A"?" was erroneously construed as an admission that plaintiff himself had not complied with the contract. To ascertain the true meaning of the testimony given by a witness "everything stated by him as well on his cross-examination as on his examination in chief, must be considered. Facts imperfectly stated in answer to one question may be supplied by his answer to another; and when from one statement considered by itself an inference may be deduced, that in-

ference may be strengthened or repelled by the facts disclosed in another." "We must not select isolated parts of the testimony; its general bearing must be taken altogether," said another court. And where there are apparent inconsistencies in the testimony of a witness, they should be reconciled if possible, for perjury is not to be presumed." 3 Moran, Rules of Court, 601–602, 1952 Edition.) Considering the uncontradicted and repeated testimony of plaintiff to the effect that his work had been stopped by defendant on December 12, 1950, prior to the expiration of the 45-day period, so much so that he even went to the Bureau of Labor and to the court to make defendant comply with the agreement, his answer, alluded to, should be construed as meaning that he was not able to, or did not, comply with the terms of the contract because he was stopped by defendant from doing so.

We find no proper and convincing proof nor good basis for item ₱200, as expenses before the Bureau of Labor, and item ₱500 as moral damages. These items are, therefore, disallowed.

Finding merit in the appeal, we hereby reverse the judgment of the lower court and order the defendant-appellee to pay unto the plaintiff-appellant the amount of ₱2,175, with legal interests thereon at the rate of 6 per cent per annum from the date of the filing of the complaint, *January* 20, 1950, until fully paid, plus the costs in both instances.

Rodas and *Martinez, JJ.*, concur.

Judgment reversed.

[No. 8826–R. February 5, 1954]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* FLORENCIO NICOLAS Y FLORES, defendant and appellant

CRIMINAL LAW; HOMICIDE; SELF-DEFENSE; REASONABLE NECESSITY OF THE MEANS EMPLOYED TO REPEL AGGRESSION.—In a situation like the one at bar, where the contestants are in the open and the person assaulted can exercise the option of running away, the general rule that such person is not generally justified in taking the life of one who assaults him with his fists only, without the use of a dangerous weapon must be upheld.

APPEAL from a judgment of the Court of First Instance of Quezon City. Perez, J.

The facts are stated in the opinion of the court.

Rodolfo M. Caluag for accused-appellant.

Solicitor General Juan R. Liwag and *Solicitor Felix V. Makasiar* for plaintiff-appellee.

DE LEON *J.*:

Appellant Florencio Nicolas y Flores seeks to reverse a decision of the Court of First Instance of Rizal, convict-

ing him of homicide, modified by the privileged mitigating circumstance of incomplete self-defense, and sentencing him to undergo a prison term of from 4 months and 1 day of *arresto mayor* to 2 years, 4 months and 1 day *of prisión correccional*, with the accessory penalties of the law, to indemnify the heirs of his deceased victim, Atilano Alcantara, in the amount of ₱3,000 with subsidiary imprisonment in case of insolvency, and to pay the costs.

There is a sharp conflict in the narrations of the parties. According to the prosecution, between 2:00 and 2:30 p.m, on April 5, 1950, Encarnacion del Rosario heard the appellant, who is 51 years old, talking angrily in front of a Chinese store at the corner of Makiling and Calavite streets, Quezon City, where she had gone to buy cigarettes. Then she saw the deceased, Atilano Alcantara, who is 28 years old, coming out of the said Chinese store with a bread slicer about ½ foot long. Encarnacion took the bread slicer from Alcantara after about 2 minutes of persuasion. After that, everything was quiet. Florencio Nicolas left, while Alcantara remained in the store. About half an hour later, the accused returned to the store, shouted at the deceased, and the duo grappled inside the store. At this juncture, Encarnacion del Rosario, who was still in the store when the appellant returned, went out of the said store and repaired to the other side of the street about 10 yards away, from where she saw Alcantara already retreating, with the appellant pursuing him, until said Alcantara fell into a muddy pit along the street about 5 yards away from the store. While Alcantara was lying on his back in the mudhole, Encarnacion saw the appellant stab his victim with a *balisong*. Witness Jose Lim also heard the protagonists shouting at each other in an angry mood. He was the one who separated thhe appellant and his victim. Both Encarnacion and Lim stated that the late Alcantara was unarmed during the second stage of the incident, which resulted in his stabbing in the abdomen.

The evidence for the defense would show that at about 2:00 p.m. on the same date, while the appellant was playing *mah-jongg*, his victim went behind him and suddenly gathered the ivory pieces appertaining to him (appellant) which contained many flowers and had a big chance of winning. The appellant just looked at the deceased without saying anything. With respect to the incident at the Chinese store, counsel for the appellant avers that the facts surrounding the said incident are correctly summarized in the appealed decision as follows:

"Between 2:00 and 2:30 in the afternoon of April 5, 1950, defendant Florencio Nicolas y Flores went to a Chinese store at the corner of Makiling and Calavite streets, Quezon City, to buy some tobacco. When the defendant arrived at the store, Atilano Alcantara, holding a bread slicer, met the former saying 'Now, do what

you want to do if you have any grudge against me.' To prevent trouble, Encarnacion del Rosario took the knife slicer from Alcantara and nothing more happened. The defendant left for his home while Alcantara tarried on in the store.

"About half an hour later, the defendant went back to the same store to purchase tobacco because he was not able to do so when he went there earlier because of the incident with Alcantara. Upon reaching the store, Alcantara suddenly approached the defendant and gave him a fist blow which caused said defendant to fall down outside of the store. Since Alcantara was a bigger and younger man while the defendant is much older and weaker than the former, said defendant fell down and Alcantara stepped on him and kicked him on his right belly. Nicolas was, however, able to get hold of the leg of Alcantara causing the latter to fall down into a muddy pit. A struggle ensued between the defendant and Alcantara in the course of which, the former stabbed Alcantara with a *balisong*, Exhibit A, inflicting on said Alcantara an incise longitudinal wound about 21 cms. long at the right abdomen and another wound of about 6 cms. long at the right foot. After inflicting the wounds, the defendant backed out and stood up and left. Alcantara died as a consequence of his wound."

Under this set of facts, the defense contends that appellant Florencio Nicolas stabbed his victim in complete self-defense. In this appeal, the defense argues that the lower court erred in holding that the means employed by the appellant in preventing or repelling the unlawful aggression on the part of the deceased was not reasonable. On the other hand, the Solicitor General maintains that the appellant failed to prove his plea of self-defense by the required clear and convincing evidence, so that the lower court should not have appreciated the presence of unlawful aggression and lack of sufficient provocation on the part of the appellant. He concedes in favor of the appellant, however, the presence of the mitigating circumstances of voluntary surrender and passion or obfuscation and, since there are not aggravating circumstances to offset them, the Solicitor General recommends that the penalty meted out to the accused be increased, which penalty should not be less than 6 months and 1 day of *prisión correccional*, or more than 6 years and 1 day of *prisión mayor*, pursuant to paragraph 5 of article 64 of the Revised Penal Code.

After a thorough study of the evidence of record and the decisions of our Supreme Court in analogous cases, we are of the opinion, and so hold, that, contrary to the contention of the prosecution, the lower court did not err in finding that there are present in this case the elements of unlawful aggression and lack of sufficient provocation on the part of the appellant, and this Court hereby adopts, as its own, the following pertinent findings of the lower court:

"In order that the defendant may support in his behalf the plea of self-defense, it is absolutely essential, as a principal element

thereof, that such defense shall have been preceded by an outward and material attack by the assaulted (People *vs.* Desierto, 45 Off. Gaz., 4542, 4548). According to the defense, when the defendant returned to the store, Atilano Alcantara suddenly approached said defendant and gave him a fist blow, as a result of which, said defendant fell down. Prosecution witness Encarnacion del Rosario testified that defendant and Alcantara grappled inside the store but she did not state who was the aggressor. The evidence of the defense to the effect that the deceased Alcantara was a trouble maker; that his general reputation in La Loma was that he was a King in the neighborhood, so to speak; and that he had about twice the size of the defendant has not been contradicted by the prosecution. In determining whether the accused was the aggressor, the character of the deceased may be taken into consideration as the same may throw light on the probability of deceased's action. Evidence of the violent and dangerous character of the deceased is competent for the purpose of determining whether deceased or the accused was the aggressor. Taking into consideration the direct evidence of the defense that it was the deceased who attacked the defendant and boxed the latter upon seeing him together with the character of the deceased as a trouble maker and the absence of proof on the part of the prosecution on the point of who the aggressor was, the Court arrives at the conclusion that deceased was the aggressor in this instance and, therefore, declares that the element of unlawful aggression is present.

* * * * * * *

"The evidence shows that when the defendant arrived at the Chinese store for the first time, the deceased challenged him to do anything he liked to do. In the first phase of the incident, the provocation, therefore, came from the deceased. It is hinted that the provocation could have come from the defendant because, previous to the incident in question, the deceased interferred in the *mah-jong* game in which the defendant could have won without such interference and that such interference was resented by the defendant. Considering however, the character of the deceased as a trouble maker, it is reasonable to believe that after breaking up the *mah-jong* game, said deceased could have added insult to injury by challenging the defendant at the Chinese store so that from the mere fact that the deceased was the one who broke up the *mah-jong* game which the defendant could have easily won, it cannot be deduced that the latter was the one who provoked the incident at the Chinese store. If the defendant really resented the act of the deceased, there would have been trouble between the defendant and said deceased right at the *mah-jong* game but the fact that there was no such trouble shows that the defendant swallowed the humiliation which the deceased made him suffer and did not mind the rude act of said deceased. There is, therefore, nothing in the evidence which shows that the defendant was guilty of provocation immediately preceding the fight which resulted in the death of Alcantara. The element of lack of sufficient provocation on the part of the person defending himself is, therefore, present."

The important issue, however, is whether there was reasonable necessity of the means employed to prevent or repel the aggression. In addition thereto, there is also the question of the proper penalty to be imposed upon the accused.

In ruling out the concurrence of the element of reasonable necessity of the means employed to prevent or repel the aggression, the court below said that there is no con-

clusive proof that the deceased had a knife with him at the time that he was killed. On the other hand, counsel for the appellant again invites our attention to the character of the deceased, who was an ex-convict and known to be a bully in his district, the disparity in the ages and physical build of the protagonists, and the suddenness of the aggression, and cites the cases of People *vs.* Paras, 9 Phil., 376; People *vs.* Lara, 48 Phil., 153; People *vs.* Ignacio, 58 Phil., 858; People *vs.* Padua, 40 Off. Gaz., No. 5, August 2, 1941, 998; and People *vs.* Pineda, 43 Off. Gaz., August, 1947, 3119.

Encarnacion del Rosario testified that a grapple preceded the fatal stabbing; that the deceased fell on the mud-hole while he was retreating, with his assailant pursuing him; and, that the latter stabbed his victim in the abdomen while his said victim was prostrate on the mud-hole. In answer to a question propounded by the trial court, Dr. Ernesto G. Brion of the National Bureau of Investigation, who performed the autopsy on the body of deceased Alcantara, stated that the wound on the right abdomen might have been inflicted while the victim was lying on the ground.

The story of the appellant is diametrically opposed to the testimony of Encarnacion del Rosario. From his affidavit and testimony in court, the appellant claimed that the deceased was immediately able to rise up after he had grabbed his (deceased Alcantara's) leg and fell; that the deceased made efforts to fish out a knife from his person; and, that while they were standing and struggling, the appellant took his own knife and stabbed the deceased with it.

This Court can not believe the pretension of the accused. The lower court disregarded the supporting testimony of Felipe de Roxas. The name of this defense witness was not mentioned by the accused when he was investigated at police headquarters at about 4:00 p. m. on the day of the fatal stabbing. Encarnacion del Rosario positively stated that the deceased was unarmed. Indeed, no weapon was found on the person of the deceased. It is hard to believe that, both protagonists being armed, it was the deceased—younger and stronger—who was stabbed, specially where, as claimed by the accused, the said accused was boxed and kicked by the deceased, which assault might have rendered him weaker, considering his age and physical build. From the affidavit and declarations of the appellant on the witness-stand, said appellant used his knife only ones on the deceased, and that was while the said appellant and his victim were standing. The fact remains, however, that, beside the stab wound on the abdomen, which caused the death of Alcantara, the deceased also sustained a wound, 6 cms. long, on the right foot.

This wound must have been inflicted upon the deceased while the said deceased was helplessly prostrate on the mud-hole, which circumstance strongly supports the testimony of Encarnacion del Rosario. Said Encarnacion del Rosario is a disinterested witness. Because of the sudden attack on the part of the deceased, the accused must have been forced to take out his *balisong*. Seeing the *balisong* and because he was unarmed, the deceased had no other alternative but to retreat and, while retreating, he fell into the muddy pit, and at this precise moment, the accused had the option of running away.

With this view that we take of the case, we find no valid reason for departing from the general rule that, in a situation like the one before us where the contestants are in the open and the person assaulted can exercise the option of running away, such person is not generally justified in taking the life of one who assaults him with his fists only, without the use of a dangerous weapon. We can not apply the doctrines enunciated in the cases cited by appellant's counsel. In the Paras case, the deceased continued kicking the accused therein while he (the accused) was on the ground and he fired his revolver while he was still in such a predicament. In the Lara case, there was a struggle for the possession of the pistol of Lara and the pistol was discharged in the course of the struggle. It was also dark, and the deceased suddenly pounced on Lara in the darkness. In the Ignacio case, the Suppreme Court found that the appellant was cornered for he had his back to the iron railing and 3 or 4 men, who were larger and stronger than he, were persistently striking him with their fists, if not with clubs. In the Padua case, this Court found both combatants, who were unarmed, to be on their feet; that the incident happened in the house of the appellant; and, that on that very occassion the deceased positively showed his desire to impose his will on appellant's family. In the Pineda case, the killing also took place in the house of the appellant, and was immediately preceded by a continuous and persistent struggle for the bolo of the appellant.

The Solicitor General concedes, and correctly, the presence of the mitigating circumstances of voluntary surrender and passion or obfuscation, without any aggravating circumstance to offset them. The accused was found in, and taken from, his house in the same afternoon of the fatal stabbing before any warrant for his arrest was issued by a competent court. The humiliation and outrage committed on his person by the deceased, both at the *mah jong* game and at the Chinese store, could not but anger the accused, considering his age and the fact that the affromt was done in public. The lower court, in considering the presence of the privileged circumstance of

incomplete self-defense, lowered the penalty by 2 degrees than that prescribed by law for the offense, pursuant to article 69 of the Revised Penal Code. However, since we must also appreciate in favor of the accused the 2 mitigating circumstances pointed above, without any aggravating circumstance to offset them, the penalty to be imposed should be that next lower to that prescribed by law, which, in this case, is *arresto mayor,* the same to be imposed in the period this Court may deem applicabble, pursuant to article 64, No. 5, of the Code The appellant is, therefore, hereby sentenced to suffer imprisonment of 2 months and 1 day of *arresto mayor.*

Modified as above-indicated, the decision of the lower court, being in accord with the law and the evidence, is hereby affirmed in all other respects, with costs against the appellant. So ordered.

Concepcion and *Dizon, JJ.,* concur.

Judgment modified.

OFFICE OF ALIEN PROPERTY

Department of Justice of the United States

HORST W. SEYFARTH

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32(*f*) of the Trading with the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after provision for taxes and conservatory expenses:

Claimant.—Horst W. Seyfarth.
Claim No. 1439.

Property.—The sum of P6,805.50, representing the net proceeds of the sale of the 5,000 shares of the I.X.L. Mining Company and the 2,000 shares of the Balatoc Mining Company, vested among others, under V. O. Nos. P–229 (dated June 25, 1947) and P–251 (dated June 30, 1947), respectively.

Executed in Manila, Philippines, on May 17, 1954.

For the Attorney General:

DALLAS S. TOWNSEND
Assistant Attorney General
Director, Office of Alien Property

By: STANLEY GILBERT
Manager, Philippine Office

Filed with the *Official Gazette*, May 17, 1954 at 2:00 p.m.